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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV98–916–2 IFR]

Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes "CA Utility" quality requirements for California nectarines and peaches for the remainder of the 1998 season. The "CA Utility" quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be present in each container marked "CA Utility." Currently, the "CA Utility" quality requirement permits not more than 30 percent of nectarines or peaches in any container to meet or exceed the requirements of U.S. No. 1. This relaxation increases that limitation from 30 percent to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause the fruit to fail U.S. No. 1 grade requirements. This rule will allow more U.S. No. 1 nectarines and peaches to be packed in containers marked "CA Utility," and is expected to benefit growers, handlers, and consumers.

DATES: Effective September 23, 1998. Comments received by October 7, 1998 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this final rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12866, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This interim final rule relaxes, for the remainder of the 1998 season, the "CA Utility" quality requirement to allow more U.S. No. 1 grade nectarines and peaches in containers marked "CA Utility". Currently, the term "CA Utility" means that not more than 30 percent of the nectarines and peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, and meet other specified requirements. This interim final rule increases that percentage to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that will not cause the fruit to fail to meet the requirements of U.S. No. 1. This relaxation will be in effect for the remainder of the 1998 season, and will allow more U.S. No. 1 grade fruit to be packed as "CA Utility" quality.

The Nectarine Administrative Committee (NAC) and Peach Commodity Committee (PCC) (committees) met on September 15, 1998, to discuss this relaxation. At that time, the NAC voted without opposition to recommend the increased percentage of U.S. No. 1 nectarines with non-scoreable blemishes. The PCC voted with eight in favor and one opposed to recommend a similar change. The member opposed believed that it was too late in the season to make such a change, that such a change would

disadvantage those who had already shipped "CA Utility" fruit in 1998, and that more study and analysis of the situation was needed.

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of U.S. No. 1, except there was a more liberal allowance for open sutures that were not "serious damage."

The minimum grade, size, and maturity requirements in § 916.356 applicable to shipments of California nectarines apply during the period April 1 through October 31 each year. The minimum grade, size, and maturity requirements in § 917.459 applicable to shipments of California peaches apply during the period April 1 through November 23 each year.

Since the 1996 shipping season, the nectarine and peach regulations have allowed "CA Utility" quality to be shipped during the regulatory periods. Utility quality is a lower quality fruit than U.S. No. 1.

Containers marked as "CA Utility" must be inspected by the Federal or Federal-State Inspection Service and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grades of Peaches, and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" as defects which are damaging to the grade of the fruit, while some other blemishes are either not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and in the second instance, the blemishes are termed "non-scoreable." It is the recommendation of the committees that such non-scoreable blemishes must be present on at least one-quarter of the 40 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility."

While containers marked "CA Utility" fruit are subject to relaxed quality requirements, all other requirements of the orders must be met.

In addition to the grade requirements, §§ 916.350 and 917.442 require each package or container of nectarines and peaches meeting the requirements of "CA Utility," to be conspicuously marked with the words "CA Utility" on a visible display panel.

Through August 31 of the 1998 season, shipments of "CA Utility" quality nectarines and peaches have averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been less than 2 percent. The increase this season is attributed to quality problems resulting from heavy early season rains. Also, hail storms later during the season damaged some fruit rendering it unsalable, while some fruit sustained only moderate scarring. This is especially true for nectarines, whose smooth skin does not provide the same protection as the fuzzy exterior of peaches.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign buyers found the lower-quality fruit acceptable in some markets. Shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of "CA Utility" peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes. By contrast, shipments of "CA Utility" nectarines represents 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of "CA Utility" peaches represents 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season.

This rule amends §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section to allow not more than 40 percent U.S. No. 1 grade fruit to be packed in containers marked as "CA Utility" except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes.

At the September 15, 1998, committee meetings, comments supporting the recommendation were made by handlers who had experienced incidents where the percentage of U.S. No. 1 fruit contained in their "CA Utility" boxes was found to be higher than permitted by the orders' rules and regulations. In those instances, they were forced to repack the boxes, move blemished fruit to boxes containing U.S. No. 1 fruit, or discard or donate the fruit.

At least one handler complained that the fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place the fruit with non-scoreable blemishes in boxes marked "CA Utility." The limitation of not more than 30 percent U.S. No. 1 fruit in boxes marked "CA Utility" became a greater hindrance as the season progressed. The handler noted that an unseasonable morning rain had recently caused dark stains on the skin of nectarines, rendering them unsuitable for inclusion in his U.S. No. 1 boxes. He preferred including such fruit in the "CA Utility" boxes, but doing so caused the "CA Utility" boxes to contain more than the 30 percent U.S. No. 1 fruit permissible.

A niche market exists for utility quality fruit and an opportunity should be made available to market somewhat better quality "CA Utility" fruit to meet demand. Allowing ten percent more U.S. No. 1 grade fruit to be packed as "CA Utility" quality requirements would allow more fruit to be marketed as "CA Utility" if handlers prefer to do so. "CA Utility" quality fruit is generally made available at lower prices to especially benefit lower-income consumers.

Some committee members initially continued to support limiting the amount of U.S. No. 1 grade fruit that can be included in a utility pack to 30 percent of the total in any container to maintain differences between U.S. No. 1 containers and "CA Utility" containers. However, after further discussion, it was agreed that a greater percentage of U.S. No. 1 in a "CA Utility" container would not be confusing if such fruit is also blemished. It was, therefore, agreed that an additional 10 percent U.S. No. 1 should be permitted except that every piece of fruit in that 10 percent must possess a non-scoreable blemish. This relaxation will be in effect for the remainder of the 1998 season. The boxes marked "CA Utility" would be clearly distinct from boxes containing U.S. No. 1 grade. Failure to provide a clear distinction could cause confusion in the marketplace and would not meet the goal of providing low-cost fruit to low-income consumers. It is the opinion of the committees that this relaxation will not cause confusion among buyers.

Data on recent production and shipments of California nectarines and peaches appear to indicate that "CA Utility" quality fruit can be marketed

successfully without interfering with sales of higher quality fruit. In fact, some handlers noted that they used the "CA Utility" box as a "safety net." Fruit which was not good enough to meet their own criteria for packing in U.S. No. 1 boxes could be better utilized in boxes of "CA Utility." The advent of "CA Utility" quality requirements has given handlers increased flexibility to improve the overall appearance of their U.S. No. 1 shipments.

For these reasons, the NAC and PCC recommended that for the remainder of the 1998 season that the percentage of U.S. No. 1 nectarines and peaches permitted in containers marked as "CA Utility" quality be increased from 30 percent to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. This relaxation will be in effect for the remainder of the 1998 season. The committees also voted to review the percentages during the winter.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000. Small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.356 and 917.459 of the orders, grade and size requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect during the period April 1 through October 31 each year for nectarines, and April 1 through November 23 for peaches. This rule relaxes, for the remainder of the 1998 season, the definition of the "CA Utility" quality for California nectarines and peaches. The "CA Utility" quality requirement is based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. Currently, the "CA Utility" quality requirement, permits not more than 30 percent of the peaches in any container to meet or exceed the requirements of a U.S. No. 1. This relaxation increases that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause the fruit to fail to meet U.S. No. 1 grade requirements. This rule is expected to benefit growers, handlers, and consumers.

Since the 1996 shipping season, the nectarine and peach regulations have allowed "CA Utility" fruit to be shipped during the regulatory periods. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not "serious damage. "CA Utility" quality is a lower-quality fruit than U.S. No. 1 and has been regulated since its inception in 1996. Through August 31 of the 1998 season, shipments of utility quality for both nectarines and peaches have averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been in the 1 to 2 percent range. The increase so far this season is mostly attributed to quality problems resulting from heavy early season rains.

A niche market exists for "CA Utility" quality fruit and the opportunity should be made available to market somewhat better-quality "CA Utility" fruit to meet demand.

According to comments made at the meeting on September 15, 1998, changing the requirements now to allow additional U.S. No. 1 fruit to be packed in "CA Utility" containers would not disadvantage those handlers who have already finished for the season. Those handlers were able to put fruit grading U.S. No. 1 into their U.S. No. 1 containers. Since they would have likely wanted to pack such fruit in these containers to receive the higher return anticipated for U.S. No. 1 fruit, they have not been harmed economically. Therefore, no harm has been done by implementing this relaxation this late in the season.

Therefore, the NAC and PCC recommended changing the "CA Utility" quality at their September 15, 1998, meetings by modifying the percentage of U.S. No.1 fruit in each box. The committees also voted to review the percentages during the winter.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, lower-quality nectarines and peaches were authorized for shipment as "CA Utility" as an experiment for the 1996 season only. Such authorization was continued during the 1997 and 1998 seasons. This rule changes the percentage of U.S. No. 1 nectarines and peaches which can be packed in a container marked "CA Utility" for the remainder of the 1998 season except that the fruit grading U.S. No. 1 must have a specified percentage of non-scoreable blemishes.

During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were approximately 210,000 boxes of nectarines and approximately 366,000 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were approximately 230,000 boxes of nectarines and 217,000 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, respectively. By contrast, shipments of "CA Utility" nectarines represents 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of "CA Utility" peaches represents 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season. Continued availability of "CA Utility" quality fruit with the new relaxations is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

The committees considered several alternatives at the meeting. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in "CA Utility" containers

unchanged. It was determined that alternative would not address the problem which faced the industry. The NAC and PCC also considered increasing the 30 percent U.S. No. 1 tolerance to not more than 40 percent or to not more than 50 percent, but determined that such a relaxation could render "CA Utility" boxes less distinctive from U.S. No. 1 and create confusion in the marketplace. Another alternative included a requirement that at least 90 percent of the individual fruits in all boxes marked with "CA Utility" possess defects. Such a requirement would create a box of fruit which would be distinct from U.S. No. 1 due to a greater number of defects present. However, this alternative was determined to be unacceptable because it represented too radical a change of "CA Utility" quality given the emergency nature of the recommendation. This alternative fails to offer a sound basis for comparison with the current requirement of not more than 30 percent U.S. No. 1 because it does not reference the U.S. No. 1 grade. Such comparison may be necessary as the committees continue to study marketplace reaction to changes in quality requirements of "CA Utility." fruit.

This action does not impose any additional reporting and recordkeeping requirements on either small or large handlers.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in Parts 916 and 917 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0072 and 0581–0080, respectively.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the September 15, 1998, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule reflects the Department's appraisal of the need to revise the quality requirements for California nectarines and peaches. The Department believes that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should apply to as many shipments of California nectarines and peaches as possible. The shipping seasons for both California nectarines and peaches began on April 1, 1998. To maximize the effectiveness of this relaxation prior to the end of the season, this rule needs to be in place as soon as possible. Further, handlers are aware of this rule, which was recommended and discussed in public meetings of the committees and no additional time is needed for those handlers to comply with the relaxed quality requirements. Finally, a 15-day comment period is provided for in this interim final rule, and any written comments received will be considered in the finalization of this interim final rule. A 15-day comment period is appropriate because the end of the season is quickly approaching.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.356, paragraph (a)(1) introductory text, the last proviso in the first sentence and the last phrase are revised to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(1) * * * *Provided further*, That, during the period September 23, 1998, through October 31, 1998, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that at least one-quarter of the fruit grading U.S. No. 1 grade shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. In § 917.459, paragraph (a)(1) introductory text, the last proviso in the first sentence and the last phrase are revised to read as follows:

(a) * * *

(1) * * * *Provided further*, That during the period September 23, 1998, through November 23, 1998, any handler may handle peaches if such peaches meet "CA Utility" requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, except that at least one-quarter of the fruit grading U.S. No. 1 grade shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

Dated: September 18, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–25398 Filed 9–21–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 50

RIN 3150–AF41

Financial Assurance Requirements for Decommissioning Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The amendments respond to the potential rate deregulation in the power generating industry and NRC concerns regarding whether current NRC decommissioning funding assurance requirements will need to be modified. The amendment requires power reactor licensees to report periodically on the status of their decommissioning funds, and on changes in their external trust agreements and other financial assurance mechanisms. The amendment also allows licensees to take credit for certain earnings on decommissioning trust funds.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1978; e-mail; bjr@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC published an advance notice of proposed rulemaking (ANPR) for "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" on April 8, 1996 (61 FR 15427). This action was developed to amend the NRC's regulations relating to financial assurance requirements for the decommissioning of nuclear power plants in anticipation of rate deregulation of the power generating industry. In response to the comments received on the ANPR, the NRC published a proposed rule on September 10, 1997 (62 FR 47588). The NRC proposed to: (1) Revise the definition of "electric utility" and related definitions contained in 10 CFR 50.2; (2) add a definition of the term "Federal licensee" to address the issue of which licensees may use statements of intent; and (3) require power reactor licensees to report periodically on the status of their decommissioning funds and changes in their external trust agreements. The rule also would have amended 10 CFR 50.75 to expressly allow licensees to take credit for the earnings on decommissioning trust funds during the operating and decommissioning periods.

II. Comments on the Proposed Rule

The Commission received 33 letters containing more than 200 comments on the proposed rule representing 25 licensees or licensee organizations, 5 State agencies or Public Utility Commissions, 2 public interest groups, and an individual with no affiliation provided. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

The comments have been organized by topic and an analysis of them follows.

1. Definition of Electric Utility

A. Linkage Between Decommissioning Financial Assurance Requirements and Financial Qualification Requirements (i.e., Linkage Between Costs of Operation, Maintenance, and Decommissioning)

Several commenters, including the Nuclear Energy Institute (NEI), stated that NRC should not use the term "electric utility" in its decommissioning financial assurance rules because the term is used for different purposes in the context of NRC's financial qualification requirements in 10 CFR 50.33(f). These commenters stressed that only decommissioning costs are of concern with respect to the financial assurance requirements, whereas only operation and maintenance costs are of concern with respect to the financial qualification requirements. By referencing all these costs as well as the cost of "electricity," the proposed definition of electric utility is both unclear and problematic.

The commenters cited several specific problems. First, the definition does not adequately express NRC's intent that an entity can demonstrate adequate assurance if it can "conclusively demonstrate a government-mandated, guaranteed revenue stream for all unfunded decommissioning obligations" by virtue of a non-bypassable charge that covers only decommissioning costs. (For example, one commenter stated that, in California, licensees are assured of recovering decommissioning costs in distribution rates through non-bypassable means, although recovery of the costs of operation and maintenance may not be assured.) Second, the definition could unnecessarily invite challenges to the rates established by regulators. Specifically, by requiring that an electric utility's rates be "sufficient for the licensee to operate, maintain, and decommission its nuclear plant safely," the proposed definition could imply that NRC may in the future evaluate the sufficiency of rates established by other regulatory authorities to cover costs of operations and maintenance. Third, by referencing "operation," the definition could create or imply some responsibility for decommissioning funding on the part of nonowner operators that, they argued, may inhibit the formation of joint operating companies.

The NRC believes that commenters' concerns in this area were addressed by the third sentence of the proposed definition, that states that "An entity whose rates are established by a regulatory authority by mechanisms that cover a portion of its costs will be considered to be an 'electric utility' only for that portion of the costs that are collected in this manner." NRC did not intend to have all licensees consider only the combined costs of operation, maintenance, and decommissioning. Nevertheless, even some commenters who understood NRC's intent suggested modifying this third sentence. One suggestion was to replace it with "An entity whose rates are established by a regulatory authority by mechanisms that cover only decommissioning costs will be considered to be an 'electric utility' with respect to its decommissioning funding responsibilities." (Presumably an additional parallel sentence would address "costs of operation and maintenance costs * * * with respect to its financial qualification requirements.") Another suggestion was to clarify the third sentence by referring to recovery of a certain portion *or discrete category* of costs. Either of these suggestions would also obviate any need to include the 10 percent de minimis threshold for non-recovered costs that was suggested by one commenter (i.e., because the relevant category of costs—for decommissioning—would be recovered, even if they were less than 10 percent of all costs), and would allay the concerns of several commenters that an entity recovering only decommissioning costs through non-bypassable charges might be considered less than a 100 percent electric utility for purposes of the decommissioning requirements.

One possible remedy, as suggested by NEI, would be for NRC to construct and define a new term such as "qualified nuclear entity" that would apply only to

the decommissioning financial assurance requirements. NEI would define a qualified nuclear entity as one that obtains decommissioning funds through: (1) A rate-setting mechanism; (2) a non-bypassable charge established by legislative or regulatory mandate; or (3) a binding contractual agreement with another party that is equal in amount to the entity's decommissioning funding obligation. Only the third option in NEI's definition is not generally consistent with NRC's proposed definition. NEI's comment does not fully or adequately explain the meaning or implications of the binding contractual agreement included as the third option in its definition. However, other commenters specifically referenced NEI's comments, and objected to the binding contractual agreement portion of NEI's suggested definition. Some of these commenters stated that a binding contractual agreement would provide inadequate assurance unless the party offering the contract were appropriately qualified.

As a final point, NEI noted that the term "electric utility" may take on a different meaning as a result of industry restructuring, but would not alter the existing definition of electric utility which would, under NEI's proposal, remain applicable to NRC's financial qualification requirements. The logic of this position is that the current rule is intended to address the decommissioning financial assurance requirements rather than the financial qualification requirements. Nevertheless, the loss of regulatory oversight as a potential consequence of industry restructuring is as relevant to NRC's financial qualification requirements as it is to NRC's decommissioning financial assurance requirements. Therefore, the NRC has adopted another approach that is intended to address commenters' concerns, but that does not have some of the shortcomings of NEI's approach. The Commission has decided not to change the current definition of "electric utility" as it applies to financial qualifications requirements in 10 CFR 50.33(f). Rather, the NRC is clarifying the applicability of external sinking funds and other mechanisms directly in 10 CFR 50.75.

B. Direct vs. Indirect Cost Recovery

Some commenters argued against the proposed deletion of the phrase "either directly or indirectly" in the first sentence of NRC's existing definition of electric utility, which states that "Electric utility means any entity that generates or distributes electricity and which recovers the cost of this electricity, *either directly or indirectly,* through rates established by the entity itself or by a separate regulatory authority." These commenters stated that allowing cost recovery based only on regulated rates and non-bypassable charges might restrict licensees from competing in the open market. Specifically, the change might prevent licensees with Public Utility Commission (PUC)-or Federal Energy Regulatory Commission (FERC)-approved, long-term power sales agreements from qualifying as electric utilities.

It is not clear whether PUC-or FERC-approved, long-term power sales agreements would qualify as cost of service regulation or as non-bypassable charges (and hence as cost recovery through regulated rates) under either the current definition or the proposed definition. Assuming that PUCs or FERC analyze these agreements to ensure that they are consistent with the entity's recovery of all reasonable and prudent costs, it would be reasonable for NRC to interpret these agreements as acceptable under either definition. Because this interpretation would not be obvious under either definition, however, such an interpretation by NRC would have to be implemented through existing or new guidance documents, whether or not the phrase is added to the definition. If these agreements are not consistent with the entity's recovery of all reasonable and prudent costs, then the phrase "either directly or indirectly" has been deleted appropriately.

Another commenter stated that NRC should not delete the phrase "directly or indirectly" because the deletion could be interpreted as eliminating the exemption from financial qualification requirements applicable to nonowner operators who cover their costs under contracts with owners. The commenter claimed that NRC has traditionally held that nonowner operators are "electric utilities" exempt from the regulated rates of the owners who are contractually committed to pay the operators' expenses. The logic of the commenter's argument seems to be that nonowner operators recover the costs of their electricity from owners, whose rates are directly regulated, thereby making the operator's cost recovery indirectly regulated. For the reasons that follow, the final rule should render this concern moot.

C. Consequences of Not Meeting the Definition

One commenter suggested that the proposed definition could result in the premature shutdown of nuclear power plants that have insufficient funds set aside to pay for decommissioning. This comment appears to argue that premature shutdowns may result if, as a result of an entity's loss of status as an electric utility, it must (but is unable to) provide up-front financial assurance for decommissioning. This issue is analyzed in Section 7.B, Prepayment/ Up-front Assurance.

D. Implications for State Ratemaking Authority

Some commenters suggested that NRC clarify that it does not intend to infringe upon State ratemaking authority. To this end, one PUC stated that the NRC should remove from the definition the requirement that utilities recover "the cost of electricity," which is only an intermediate consideration in the development of rates. This commenter suggested that the definition should be changed to "any entity that generates, transmits, or distributes electricity." In response, the NRC has neither the intention nor the authority to infringe on State ratemaking authority. The NRC believes that the final rule described below will obviate these commenters' concerns.

E. Regulatory Efficiency

Some commenters suggested that the proposed regulation at § 50.75(e)(3) be revised to avoid repeating the definition of electric utility. This comment has been adopted, de facto, by the final rule.

F. Application of Definition to Public Power Agencies

Some commenters noted that the proposed definition does not appear to require public power agencies to recover all of their costs in their rates, only that they set their own rates. In a competitive market, it does not follow that the authority of such agencies to set their own rates will, in and of itself, provide assurance of decommissioning funding.

These comments appear to address the last sentence in the proposed definition of electric utility:

> Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates are included within the meaning of "electric utility."

This sentence automatically classifies any licensee that falls in one of the above-referenced groups (collectively referred to by the commenter as "public power agencies") as an electric utility. Thus, public power agencies automatically qualify as electric utilities without consideration of any of the definition's other conditions on rate recovery. The commenters' assessment

appears sound in that, in a competitive market, such entities might not recover all their costs even if they can set their own rates. The ability to set rates adequate to achieve full cost recovery would be undermined by the loss of an exclusive service territory. Although the NRC is retaining, unmodified, the definition of "electric utility" for purposes of financial qualifications, the NRC has adopted this comment in its revised § 50.75(e).

2. Definition of Non-Bypassable Charge

A. Stricter Definition Needed

One commenter suggested revising the definition to require that monies collected via the non-bypassable charge be available to the licensee, either through assignment or some other mechanism. This comment seems reasonable. If charges are not available to the licensee (e.g., if the revenue stream resulting from the charge has been assigned to an unrelated party as a result of a securitization), then the non-bypassable charges would not provide reasonable assurance of decommissioning funding. The final rule has been modified to reflect that non-bypassable charges should be available to the licensee as part of funds for decommissioning deposited in an external sinking fund.

One commenter stated that because decommissioning funding must be secured and insulated from market risk, the preferred funding method should be a non-bypassable charge established by a regulatory mandate. According to the commenter, this approach better assures adequate funding while removing decommissioning as an issue in future competition, and also would help utilities in making optimal business decisions in the competitive environment. Regardless of the validity of the comment, the NRC believes that it would be encroaching upon the responsibilities of other regulators if it were to establish a single method for cost recovery.

B. Link Between Operation, Maintenance, and Decommissioning

One commenter stated that the definition's reference to "costs associated with operation, maintenance, and decommissioning" is problematic for the same reasons that were noted in the "electric utility" definition. (See discussion and analysis in Section 1–A.) Another commenter stated that NRC's proposed definition of non-bypassable charge could be interpreted to mean that operation, maintenance, and decommissioning costs must all be covered by a charge in order to meet the definition. This may be inconsistent with actual charges established by PUCs. For example, a PUC could decide to establish a charge for decommissioning costs, but not for operation and maintenance costs.

One feasible solution was suggested by several commenters, who stated that the definition should be revised to read "costs associated with operation, maintenance, or decommissioning. * * *" They noted that this is more consistent with the intent of the rule and would not exclude licensees that recover only decommissioning costs through a non-bypassable charge, but that recover all other costs through competition. The final rule reflects this modification.

C. Types of Non-Bypassable Charges

One commenter stated that it is not clear whether the proposed definition encompasses wire charges, stranded cost charges, transition charges, exit fees, other similar charges, the securitized proceeds of a revenue stream, or price cap regulation. If NRC decides to defer to State regulatory officials, the final rule should be clear in stating the types of charges covered by the definition. Similarly, other commenters suggested expanding the definition to include other funding mechanisms imposed or established by a governmental authority. One commenter suggested the definition might include a decommissioning liability covered by State securitization legislation. Another suggested it might include binding contracts secured by legislation or a regulatory commission order or both.

The proposed definition, as stated, includes

> * * * charges imposed by a governmental authority which affected entities are required to pay [over an established time period] to cover costs associated with operation, maintenance, and decommissioning of a nuclear power plant.

As noted in the previous section, the NRC has modified the definitions of "non-bypassable charges" in the final rule to focus solely on "costs associated with decommissioning of a nuclear power plant." With that modification, this definition seems to provide an effective performance standard for any type of charge that might be developed by State regulatory officials to cover decommissioning costs. Consequently, there seems to be little benefit to the commenter's suggestion, and some possible danger if any specific charges that might be listed in a revised definition were ultimately implemented by State regulatory officials in ways that did not meet the currently proposed definition. Nevertheless, the NRC has cited examples of non-bypassable charges in its definition, without limiting such charges only to the cited examples.

Finally, one commenter stated that NRC's commentary that securitization of a licensee's interest in non-bypassable charges "may" be an acceptable method of providing decommissioning funding assurance seems to suggest that the existence of a licensee's entitlement to non-securitized irrevocable, non-bypassable charges may not be sufficient to meet the definition and avoid up-front funding. This comment, however, seems at odds with the plain meaning of the definition of non-bypassable charges.

D. Other

Finally, one commenter suggested revising the definition to replace the phrase "governmental authority" with the phrase "regulatory authority." As pointed out by the commenter, this would make the definition more consistent with the definitions of "electric utility" and "cost of service regulation." The NRC is aware of the difference and believes the definition as presented better represents the NRC position because the term "governmental authority" is more inclusive and allows for actions by non "regulatory authorities," such as State legislatures.

3. Definition of Cost of Service Regulation

The comments addressing the definition of "cost of service regulation" seemed, in general, more directly applicable to other parts of NRC's proposal, as discussed below.

One commenter stated that the modifier "all" should be deleted from the "cost of service" definition. This commenter argued that a definition requiring that "all" reasonable and prudent costs be recovered invites a challenge to the sufficiency of a licensee's rate regulation. Similarly, another commenter stated that the definition should account for the possibility of "partial" cost of service regulation. The NRC believes that commenters" concerns in this area were addressed by the third sentence of the proposed definition of electric utility, that states "An entity whose rates are established by a regulatory authority by mechanisms that cover only a portion of its costs will be considered to be an "electric utility" only for that portion of the costs that are collected in this manner." NRC did not intend to imply that a licensee was subject to cost of service regulation only in the event that

all its reasonable and prudent costs are recovered per the definition, but rather that the licensee would be deemed to be regulated under cost of service regulation for whatever portion of its reasonable and prudent costs are covered per the definition. This comment has been rendered moot by the NRC's revised final rule.

Another commenter stated that the proposed definition of "cost of service regulation" should not exclude "performance based" and "incentive" ratemaking adopted by some State ratemaking authorities. This commenter proposed adding the following to the definition: "Cost of service regulation includes, but is not limited to, alternative forms of ratemaking which provide for a portion of costs to be recovered based on reasonable benchmarks and incentives for good performance."

This comment does not seem to recognize that the term "cost of service regulation" is actually referenced as "traditional cost of service regulation" by the proposed definition of electric utility, which distinguishes cost of service regulation from indirect cost recovery through non-bypassable charge mechanisms. In the final rule, this reference to traditional ratemaking is contained in the definition of "cost of service regulation." In this broader context, the NRC's intention to keep the present focus of "cost of service regulation" seems clear and, moreover, the licensee's suggested additions seem inappropriate (because they are not precisely consistent with traditional direct recovery of reasonable and prudent costs). However, given that the NRC believes that incentive or price-cap-based ratemaking provides reasonable assurance of decommissioning funding, the NRC revised the definition of "cost of service regulation" to reflect this concern.

4. Need for General Flexibility

The flexibility issue has two dimensions. First, several commenters wanted the maximum number of financial assurance options available to reactor licensees. Second, these commenters urged NRC not to include specific or detailed criteria in its rules, which should be kept general, but to address implementation details in a regulatory guide or similar non-binding form.

Among the various financial assurance mechanisms, there are differences in cost, availability, and risk (i.e., degree of assurance). Similarly, because licensees vary in their financial situations and prospects, they pose different degrees of risk in terms of their abilities to provide funding for reactor decommissioning. Making riskier financial assurance mechanisms available to riskier licensees compounds risk to the public that adequate funds will not be available when needed. Thus, prudent public policy may limit the range of mechanisms that should be offered to certain categories of licensees. This is recognized by the commenters themselves, who more or less endorsed the NRC framework, which distinguishes a category of licensees that should not be afforded the option of using an external sinking funding, by itself, as a mechanism of assurance. The commenters did not contend that all licensees should be allowed to use all mechanisms; however, they wanted the external sinking fund option to be made available to more reactor licensees than might qualify under the NRC proposal. If this mechanism were equal to the others in terms of risk, the NRC could make it more available in the interests of flexibility. Because this option has more risk than other available assurance options, the NRC believes it is prudent to restrict its use to licensees with stronger financial or rate regulatory characteristics.

With respect to keeping the rule general and reserving details for a regulatory guide, there are two key considerations. First is a matter of regulatory philosophy and enforcement posture. Reserving details for regulatory guides is an approach that the NRC has used. However, regulatory guides are statements of one way in which licensees can meet regulations and do not establish requirements.

The second consideration is the potential need to change the requirements. It is much easier to change, add, or delete methods as acceptable for meeting requirements in regulatory guides than in regulations. Inasmuch as the NRC's power reactor licensees have begun on a path of economic restructuring, and will be in a period of transition for a number of years, the flexibility afforded by using a regulatory guide as a vehicle for decommissioning financial assurance requirements may be an advantage. On balance, the NRC is maintaining a level of detail equivalent to previous rulemaking in this area, and reserves the right to issue more detailed guidance where necessary. The NRC, in acknowledging the use of combinations of assurance methods, cannot list all possibilities, but includes as an example, the recent New Hampshire legislation that provides for the proportionate liability of the co-owners of the Seabrook Nuclear Power Station in the event that another minority owner, Great Bay Power Company, defaults on its obligations.

5. Applicability of Requirements to Plant Owners and Operators

Two commenters urged the NRC to clarify that the requirements for decommissioning financial assurance apply only to owners or entities that have assumed decommissioning liability under contracts and not to entities that are solely operators. The commenters argued that this clarification is important to the formation or use of specialized operating service companies with no ownership interests in the facilities they operate.

Applying financial assurance requirements to both owners and operators provides flexibility, since either can demonstrate compliance. This approach also recognizes scenarios in which the operator has greater financial resources or creditworthiness or both than the owner. Such a scenario is conceivable following the economic restructuring of the electric power industry. To provide greater flexibility and assurance, the NRC will not specifically exempt operator licensees from the financial assurance requirement. This is unlikely to affect the formation or use of operating service companies, because they can negotiate with reactor owners regarding which party or parties will be responsible for demonstrating financial assurance for decommissioning purposes.

6. Site-Specific Cost Estimates

Four commenters addressed the desirability of allowing licensees to use site-specific decommissioning cost estimates as the basis for financial assurance and reporting, even if these estimates are less than the current minimum amounts prescribed in § 50.75. The primary advantage asserted would be to avoid unnecessary assurance expenses when a site-specific estimate is less than the current NRC minimum. Other asserted benefits of allowing licensees to use site-specific cost estimates below the NRC minimums include greater consistency with PUC approaches, tax treatment, and possible Financial Accounting Standards Board (FASB) requirements. Moreover, acceptance of site-specific estimates might enhance the integrity of the rule, given the perception stated by several licensees of problems with the current minimum amounts and the acceptance by PUCs of site-specific cost estimates as the basis for financial assurance even where the site-specific estimates are less than the NRC minimums. However, given other

potential weaknesses in current implementation (primarily relating to the adequacy of cost estimates and the potential under-funding indicated by current balances in decommissioning trust funds), such an allowance could aggravate the risk of potential under-funding associated with the external sinking fund mechanism. Submittal of site-specific estimates to the NRC would enable it to better evaluate the funds needed for decommissioning. However, the Commission has decided to defer allowing site-specific estimates that are lower than the amounts specified in 10 CFR 50.75(c) until additional decommissioning data are obtained. (Staff Requirements Memorandum, SECY 97–251—Proposed Rule on Nuclear Power Reactor Decommissioning Costs, February 5, 1998.)

7. Alternative Methods of Assurance

A. Alternative Framework Proposed by NEI

NEI's proposed framework for financial assurance for decommissioning resembles in broad outline NRC's framework, which broadens the range of allowable assurance mechanisms for reactor licensees that lose the ability to recover decommissioning costs through regulated rate fees or other mandatory charges established by a regulatory body. Although the external sinking fund, standing alone, is not allowed for the licensees losing such regulatory oversight, the NRC framework also offers opportunities for case-by-case consideration of non-standard financial assurance arrangements. Examples include § 50.75(e)(1)(v), which allows unspecified, other guarantee methods; and certain contractual arrangements in § 50.75(e)(1)(ii)(C).

The NEI's framework involves three, rather than two, categories of power reactor licensees. Under the NEI framework, the broader set of assurance mechanisms (including the current external sinking fund approach) would be available to: First, licensees meeting the criteria for "qualified nuclear entities" and second, licensees that do not meet the requirements for "qualified nuclear entities" but that satisfy a set of financial criteria. NEI does not specify in its comments what these financial criteria would be. Third, licensees that satisfy neither the criteria for qualified nuclear entities nor the alternate financial criteria would not be allowed to use the external sinking fund option, but would be able to use the other mechanisms. NEI also includes an option for non-standard demonstrations of assurance.

The effect of the NEI proposal would be to make the current external sinking fund financial assurance option available to a larger number of licensees than would be allowed under the NRC proposal. This effect is the result of: (1) Defining "qualified nuclear entities" in terms of criteria that may be less stringent than the proposed criteria for "electric utility"; and (2) allowing licensees that satisfy certain financial criteria also to take advantage of the external sinking fund option, which they would not be allowed to do under the NRC proposal. The NEI proposal would mean an increase in the risk that adequate funds will not be available when needed because of an inadequate funding rate, inadequate earnings on invested funds, or premature shutdown. It would decrease the cost to licensees. NRC's proposal entails less risk of inadequate funding, but greater cost to licensees.

On balance, to make the external sinking fund option more available to reactor licensees, the NEI framework would result in greater risk that sufficient decommissioning funds will not be available when needed. The NEI proposal also would require the development of appropriate financial criteria, which would be challenging to develop because of the unpredictable nature of the industry. An entity that meets the financial criteria, unlike those licensees who retain the ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body, would have no guarantee of collecting sufficient funds for decommissioning and could encounter deteriorating financial conditions that could cause a reduction or cessation of payments into the external sinking fund.

The NEI framework would produce the same result if the financial criteria were made an alternate basis for being a "qualified nuclear entity." This would produce a two-tier framework parallel in structure to the NRC proposal, though different in content.

Based on these considerations, the NRC is not adopting NEI's proposed approach. Rather, the NRC is specifying in § 50.75, a variety of mechanisms for providing decommissioning financial assurance that licensees may use, depending upon their circumstances. The revised regulations would also permit the use of "other guarantee methods" that are not specifically identified in the regulations.

B. Prepayment/Up-Front Assurance

One commenter addressed the issue of up-front assurance. The commenter stressed that it is unfair for NRC to require up-front funding for licensees that no longer meet the definition of "electric utility." In particular, the commenter argued that licensees have presumed all along that they would be able to gradually fund decommissioning throughout their plants' operating lives and that, as a result, licensees who are no longer considered electric utilities may be unable to remain in business.

NRC's current financial assurance requirements for decommissioning nuclear power reactors are based on the premise that the reactors are owned by regulated or self-regulating entities that recover their decommissioning costs through a rate-setting process overseen by the applicable regulating body. This regulatory oversight provides reasonable assurance that such licensees will recover reactor decommissioning costs and continue paying into external sinking funds for decommissioning.

It is true that those licensees no longer able to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body may incur a greater burden by having to provide up-front assurance. This up-front assurance could take the form of prepayment or it could take the form of some type of surety mechanism (e.g., a letter of credit, or a partner or self guarantee). It is possible, under some restructuring scenarios, that this could lead to premature shutdown of some reactors. However, the likelihood of this occurring is highly doubtful. Many PUCs have already indicated their intention to allow for the regulated recovery of decommissioning costs, either through rates or through some type of non-bypassable charge, even for otherwise deregulated entities. For licensees that will not be able to collect funds through such a process after industry restructuring, up-front assurance is necessary to ensure that reasonable financial assurance is provided for all decommissioning obligations. In the more competitive environment that is likely to prevail after restructuring, some of these licensees may not remain financially viable for reasons not related to decommissioning financial assurance, further suggesting the need for up-front assurance.

C. Accelerated Funding

In the preamble to its proposed rule, NRC requested comment on whether accelerated funding should be

considered as a financial assurance option for licensees no longer meeting the definition of "electric utility." Several commenters supported accelerated funding, provided that the accelerated funding period would be long enough. They generally stressed that, if the funding period were too short, non-electric utilities would be placed at a competitive disadvantage, potentially leading to insolvency and premature shutdown of plants. One commenter asserted that the burden of accelerated funding would be most severe for licensees with little time remaining before shutdown. Several commenters offered specific suggestions regarding the length of an accelerated funding period, stating that it should last most or all of the remainder of the license period, two-thirds of the remaining license term or 10 years (whichever is greater), or five-eighths of the remaining license period. One suggested that the licensee or the licensee's parent company should have to pass a financial test for any unfunded amount in order to use accelerated funding. Others cautioned that accelerated funding could interfere with licensees' business planning or lead to negative tax consequences.

For licensees with reactors that have remaining operating lives of less than the accelerated funding period, the accelerated funding option would have no impact because licensees' funding schedules would be no different than they are currently. NRC would have less assurance from these licensees, given that they would no longer recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body. For licensees associated with reactors that have remaining operating lives longer than the accelerated funding period, the accelerated funding option would be a significantly less burdensome means of demonstrating financial assurance than full, up-front funding. In all cases, however, the relative decrease in burden to the licensee must be weighed against the reduced level of financial assurance provided to NRC during any accelerated funding period.

The length of an accelerated funding period would affect individual licensees differently, depending on the amount of unfunded decommissioning obligation and on the time period that the licensees would otherwise have had to complete the funding. The greater the amount of money that must be funded on an accelerated schedule, the more significant the impact will be on a licensee. For example, assuming licensees are otherwise identical and have been adequately funding an external sinking fund all along, the impact of a 10-year accelerated funding schedule would be greater for a licensee with 25 years of operating life remaining than for a licensee with 15 years of operating life remaining. (This contrasts with the comment asserting that impacts would be most severe for licensees with little time remaining before shutdown. In fact, the opposite is true, except for licensees that have been making inadequate contributions to their decommissioning sinking funds.)

The NRC believes that the alternative of requiring accelerated funding for all plants over a defined period, to cover the possibility of premature shutdown at some plants, would be too arbitrary and would lead to wide variations in impacts on licensees. Accelerated funding results in the inequitable inter-generational problem of the present generation paying for the decommissioning costs, while the future generation may receive the benefits of future electricity generation without incurring the costs of decommissioning. The suggestion that NRC should allow licensees to use accelerated funding only if they or their parent companies have sufficient assets is analogous to combining a self-guarantee or parent company guarantee with the external sinking fund mechanism. This idea has significant advantages to licensees, and is discussed in Section 7.J, "Combinations of Methods."

Another way to reduce the burden of accelerated funding on licensees would be to ensure that the accelerated contributions are tax deductible. Under current Internal Revenue Service (IRS) rules, accelerated payments into decommissioning funds may not be deductible. However, these tax changes are beyond the NRC's mandate and Congressional or IRS action would be required to accomplish them. Consequently, unless these rules are changed, licensees may be ineligible to receive tax breaks on deposited funds.

For the reasons stated above, the NRC does not consider accelerated funding to provide reasonable decommissioning financial assurance.

D. Parent Guarantees/Self-Guarantees

The commenters generally endorsed parent company guarantees and self-guarantees as a reasonable method of assurance for licensees no longer meeting the definition of "electric utility." However, a number of commenters stated that the financial tests specified in appendices A and C to 10 CFR part 30 are inappropriate for these licensees and would be overly burdensome. Several commenters suggested specific revisions to NRC's existing financial tests:

- One commenter suggested that NRC allow non-electric utilities to use: (1) A parent company guarantee from a parent meeting the criteria for self-guarantees; and (2) a self-guarantee for licensees meeting at least two of the following criteria:

—Licensee has an investment grade bond rating;
—Licensee's pre-tax income (before interest expense) divided by interest applicable to debt is greater than or equal to 2; and
—Licensee's net worth is at least twice the current remaining unfunded cost of decommissioning in current year dollars.

- One commenter stated that the self-guarantee test's "10 times requirement" for assets should be lower, but did not suggest an alternative threshold.
- One commenter suggested that the financial tests should require total assets in the U.S. and tangible net worth to be one to two times the estimated decommissioning costs, rather than what is currently specified in the tests.
- One commenter suggested that the Commission consider ownership of other revenue-generating assets (besides the nuclear power plant).
- One commenter suggested that the NRC should develop a process similar to the one used by bond-rating agencies to assess the ability of firms to continue repaying principal or to continue paying interest or dividends.
- Finally, one commenter suggested that the NRC allow non-electric utilities to use parent company guarantees in conjunction with other allowable financial assurance methods, such as external sinking funds. (The issue of using parent company guarantees in combination with other mechanisms is discussed in Section 7.J, "Combinations of Methods").

NRC's parent company guarantee is based largely on a financial test developed by the EPA more than 15 years ago. EPA's test was intended to assess the financial condition of firms managing hazardous waste that were seeking to assure closure and post-closure care obligations that are substantially smaller than typical decommissioning costs for power reactors. In adopting these tests, the NRC believed that its objectives for financial assurance would be reasonably met, but recognized that the tests were most appropriate for materials licensees, although, at that time, the financial tests were also made applicable to nuclear power plant licensees who were not "electric utilities." The NRC realized

that most power plant licensees would likely use external sinking funds rather than parent or self-guarantees to provide decommissioning funding assurance, and thus did not perform a detailed analysis of their applicability to power plant licensees.

Because deregulation is still in its earliest phases, it is not yet possible to identify or define the financial characteristics of entities that may ultimately be responsible for reactor decommissioning. Consequently, evaluating or improving the test's applicability to those licensees who are no longer able to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body may be difficult, and any criteria that might be developed could become outdated or misleading relatively quickly. Finally, developing and implementing alternative tests (such as those suggested by commenters) could place a substantial burden on the NRC. For these reasons, the NRC is considering any changes to financial tests separate from this rulemaking. Nevertheless, the NRC is implementing some changes to parent and self-guarantees that may make these assurance methods more viable for power reactor licensees. Section 7.J describes these changes in more detail.

E. Surety Methods

Three commenters addressed the issue of surety methods of financial assurance (i.e., surety bonds, letters of credit, lines of credit). The predominant issue raised by these commenters pertained to the limited availability of these mechanisms to licensees no longer meeting the definition of "electric utility." One commenter claimed that because the majority of generating companies will have an assured recovery mechanism through non-bypassable charges, there will be no new market created for surety mechanisms after industry restructuring, and that licensees required to obtain these mechanisms will be faced with significant costs. Another argued that NRC should ascertain the availability of these instruments before issuing a final rule based on the assumption of their availability. This commenter proposed the creation of a Government-managed decommissioning insurance plan to provide such mechanisms (discussed in Section 7.G, "Government-Managed Insurance Plan").

NRC recognizes that there are likely to be limits on the availability of surety mechanisms such as letters of credit, lines of credit, and, in particular, surety bonds, to licensees trying to demonstrate financial assurance. This limited availability would arise from two factors. First, the amount that would need to be assured under such a mechanism (i.e., the difference between the licensee's decommissioning cost estimate and the current balance in its external sinking fund) could in some cases be quite large and could pose a significant risk to potential providers of the mechanisms. Second, mechanism providers also may view some licensees (those that lose the ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body) as financially risky ventures given their restructured operations and newly deregulated financial characteristics (e.g., licensees may no longer have guaranteed service areas). Some licensees may be able to obtain these mechanisms only after offering significant levels of collateral to the provider as security. Generating subsidiaries without access to substantial assets other than the nuclear plant may find it difficult to provide the necessary collateral and may be unable to obtain a surety mechanism. Even if surety mechanisms are not available to some licensees, licensees may be able to use prepayment mechanisms (e.g., full up-front funding of the external sinking fund), possibly arranging for the necessary funding prior to restructuring (e.g., before a nuclear plant is placed in a generating subsidiary with few other assets). Licensees may also have access to parent and self-guarantees, which are still less costly.

F. Power Sales Contracts

Commenters suggested two possible roles for power sales contracts in the financial assurance program: (1) As a threshold condition for being able to use the external sinking fund; and (2) as a mechanism for demonstrating financial assurance. One commenter recommended that power sales contracts be accepted as a means by which licensees not meeting NRC's proposed definition of electric utility can qualify to use the broader range of assurance mechanisms—such as the external sinking fund. Another commenter concurred, stating that such contracts would be secured by legislation or a regulatory commission order or both. Commenters also recommended that, for licensees not qualified to use the external sinking fund, an assurance mechanism that would allow a licensee to show that power sales contracts are in place, could provide some or all decommissioning funding.

There is an important difference between using power sales contracts as a threshold criterion, for reactor licensees that lose the ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body, and as a financial assurance mechanism. As a threshold criterion, power sales contracts would represent evidence of the financial status and prospects (e.g., sales backlog) of a company. These contracts would be considered when private financial organizations assess the credit-worthiness of companies. However, power sales contracts have some disadvantages that work against their use as a threshold criterion. First, power sales contracts may have contingencies that make it difficult to project revenues or earnings. Such contracts are not equivalent to a Government-mandated revenue stream that would fully fund decommissioning costs. It also would be very difficult for NRC to define clearly how it would analyze and evaluate such contracts, potentially creating issues of fairness, consistency, and accountability. For example, the NRC would need to assess whether a given contract covers all licensee costs (including decommissioning), how binding it is, and its effective term. Unlike financial statement data, which can be statistically associated with subsequent financial performance, there is no objective basis or validated test for linking sales contracts to future financial performance. By making it easier for licensees that lose the ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body, or that do not have access to a Government-mandated revenue stream to use the external sinking fund, acceptance of power sales contracts as a threshold criterion may increase the risk that funds will not be available when needed. However, under certain circumstances that the NRC has specified in this final rule, the NRC believes that long-term contracts can provide levels of decommissioning funding assurance that are equivalent to other acceptable methods.

Power sales contracts also are unlikely to make good financial assurance mechanisms, unless they have terms that provide for payment of decommissioning costs under most likely occurrences. They often lack the provisions needed to ensure effective and continuing coverage (e.g., automatic renewal, notice of cancellation). For example, in *Town of Boylston* v. *FERC* (21 F.3D 1130, 305 U.S.APP.D.C. 382),

municipal purchasers successfully challenged an order to pay reactor decommissioning costs as a charge under their power purchase contracts. Moreover, FERC has authority to impose alternative provisions in the public interest if it finds contracts to be unjust and unreasonable. Power sales contracts often contain contingencies that may make it difficult to determine corresponding levels of revenues. Long-term contracts for the supply of uranium, natural gas, and coal have all been subject to litigation at one point or another because of market or regulatory changes, which may be specifically addressed in contracts or covered under "force majeure" [1] clauses. These contracts typically do not themselves effect the setting aside or guarantee of monies, although contracts could be written to serve as guarantees or to require that proceeds be deposited in external sinking funds. The NRC believes that power sales contracts that contain provisions to mitigate these shortcomings can provide reasonable assurance of decommissioning and have been allowed, under specified conditions, in the final rule.

G. Government-Managed Insurance Plan

Two commenters addressed the NRC's decision to eliminate from future consideration the concept of a captive insurance pool to pay unfunded decommissioning costs. One noted only that it agreed with the decision not to pursue this option. The other commenter, however, disagreed with the decision and urged the NRC instead to investigate the creation of a Government-managed decommissioning insurance plan. Under this plan, the licensee would be able to purchase an insurance policy from the Federal Government. The cost of the policy could be determined by each plant's performance history or Systematic Assessment of Plant Performance (SALP) rating, with poorly run plants paying a higher premium and well-run plants paying a lower premium. The commenter noted that Federal Government participation in private insurance markets is not unprecedented, citing the example of Federal flood insurance. The commenter weakened the force of his example, however, by also pointing out that Federal Government participation in private insurance markets takes place "especially where the risk is not readily subject to management or the level of potential exposure is large." Clearly, basing premiums on plant performance history implies that the commenter would expect poorly-run plants to close more frequently than well-run plants, suggesting that the risk can be managed.

The commenter advocating further examination of an insurance plan did not make clear whether the commenter favored a captive insurance pool entirely funded by the industry or an insurance system that was funded, completely or partially, by the Federal Government.

The arguments against a captive insurance pool are strong. The participants would be able to cause losses simply by not taking action to set aside adequate funds for decommissioning. Delay in setting aside funds could be beneficial because of the use value of the funds that a licensee could reallocate to some other purpose. In addition, the members of the insurance pool would be in competition with each other, and could shift costs to competitors by means of the insurance pool. Thus, an insurance pool for decommissioning would offer no incentive to licensees to reduce the magnitude of their potential claims on the pool, either from an insurance standpoint (because their decommissioning costs are insured) or from an economic standpoint (because of the advantages to them of delaying payment and of shifting costs to their competitors).

The commenter's suggestion that rates should be based on plant performance is unlikely to satisfactorily address the problem of adverse selection. Those posing higher risks might continue to be more likely to enter an insurance pool, despite being assessed higher rates, thus raising the proportion of high-risk insureds. This could increase the price of the insurance and cause other relatively low-risk entities to avoid entering the pool, even if they were being charged less. The nexus between plant performance, however measured, and likelihood of premature closure is not so clear that the Government agency responsible for the insurance would be able to set premiums accurately. Eventually the proportion of high-risk insureds could increase to the point that providing the insurance becomes unprofitable or impossible. Alternatively, mandatory participation by low-risk insureds could lead to situations in which they were subsidizing the high-risk entities, even with a rate differential.

The commenter did not present any arguments supporting Government management of a decommissioning insurance plan. If such a plan were set up without the inclusion of Federal funds, there seems to be little reason to assign a Government agency to manage it.

Finally, insurance that is partially or wholly subsidized by the Federal Government, such as flood insurance, would require Congressional action, and is outside the scope of an NRC rulemaking. Thus, the Commission is not pursuing this option further.

H. Regulatory Certification

Only one commenter suggested that NRC should reconsider its dismissal of the possibility of PUC or FERC certification that licensees within their jurisdiction would be allowed to collect sufficient revenues through rates to complete decommissioning funding. That commenter noted that NRC had relied upon the views expressed to the NRC that "no current commission can bind a future commission" and that a PUC "could not give a blanket guarantee that all licensees would be allowed to collect revenues to complete decommissioning funding."

This commenter argued that these uncertainties are "no greater than those associated with cost of service regulation, which certainly does not constitute a 'guarantee' of availability of sufficient decommissioning funds," noting also that the underlying regulatory standard is only one of "'reasonable assurance'."

The commenter, however, did not address a number of important considerations. First, the opponents of certification are particularly well informed. The comments upon which NRC relied in dismissing certification as an option came from the National Association of Regulatory Utility Commissioners (NARUC) and several State PUCs, that are particularly good sources of information concerning the limits of their own authorities and their ability to bind their successors. Second, the commenter did not address the argument, presented by NEI and endorsed by several PUCs, that new Federal legislation would be necessary to make such certifications binding. Third, the commenter did not address limitations on FERC's jurisdiction, and consequent limitations on FERC's ability to make binding certifications. Finally, the commenter suggested that NRC had adopted a "guarantee of availability" standard rather than the underlying regulatory standard. Given the weight of arguments in opposition to certification, however, NRC has concluded that certification is not a viable financial assurance mechanism.

[1] "Force majeure" refers to items largely beyond the control of the contracting parties (e.g., recession, inflation, severe market changes) that make it equitable to terminate or renegotiate contract terms.

I. "Any Other Method"

A number of commenters stated that NRC should permit more flexibility in the allowable methods for demonstrating reasonable assurance of decommissioning funding, particularly for licensees no longer meeting the definition of "electric utility." Several commenters suggested that NRC review and evaluate licensee-specific funding proposals on a case-by-case basis. Another commenter recommended that NRC allow non-electric utilities to use mechanisms developed by governmental authorities and approved by NRC. Finally, one commenter suggested that NRC grant individual licensees or States the flexibility to develop initiatives/mechanisms for providing reasonable assurance of funding.

Licensees, as discussed in Sections 7.B and 7.E of this statement of considerations, may well encounter cost and availability issues in trying to use some of the financial mechanisms allowed by NRC. In addition, the applicability of the NRC's parent company guarantees and self-guarantees to power reactor licensees is questionable (as discussed in Section 7.D.) because the underlying financial tests were developed primarily for other types of entities assuring smaller decommissioning obligations. Consequently, a case-by-case approach, through which reactor licensees that lose the ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body, could provide assurance equivalent to the other methods that the NRC is allowing. However, the NRC will need to ensure that the mechanisms used will, in fact, provide adequate financial assurance. Although, the NRC expects that only a very-limited number of licensees will use a case-by-case approach, this will potentially place a resource burden on the NRC to review individual "non-standard" mechanisms.

J. Combinations of Methods

Several commenters stated that NRC should allow utility licensees and, in particular, non-utility licensees to use combinations of mechanisms to demonstrate financial assurance for decommissioning. Two commenters suggested specifically that NRC allow non-electric utility licensees to use parent company guarantees or self-guarantees or both in conjunction with other allowable methods.

NRC's current requirements already allow combinations of mechanisms, except that two mechanisms—the self-guarantee and the parent company guarantee—may not be used in combination with other mechanisms. Allowing combinations of funding methods increases the regulatory flexibility to licensees trying to meet the requirements. (Note, however, that a licensee using a combination of mechanisms faces a greater administrative burden to obtain its mechanisms and, similarly, NRC faces an increased burden in reviewing multiple mechanisms.) For mechanisms that guarantee payment (e.g., trust fund, payment surety bonds, letters of credit), a combination of mechanisms that equals the total decommissioning cost estimate is unlikely to lead to any difficulty in assuring that decommissioning funds will be used for their intended purpose.

Some mechanisms, however, guarantee performance rather than payment. These mechanisms are self-guarantees, parent company guarantees, performance surety bonds, and some insurance. The terms of these mechanisms promise that the issuer will complete required decommissioning activities if necessary. It can be problematic to combine a performance mechanism with another mechanism (payment or performance) because of the inherent subjectivity in valuing performance. For example, a licensee may wish to combine a $100,000 parent company guarantee with a $100,000 letter of credit to assure a decommissioning cost estimate totaling $200,000. If the guarantor proves to be inefficient in conducting decommissioning, it may spend $100,000 on activities that should have cost less. In this case, the letter of credit would be inadequate to fund the remaining activities, even though the guarantor could claim to have fulfilled its performance guarantee.[2]

However, the NRC believes that this problem is of less concern in the specific case of a self-guarantee being used in combination with an external sinking fund because, in this case, the guarantor has no incentive or ability to shift costs or to avoid greater responsibility. However, if the self-guarantee were to be combined with a mechanism such as a letter of credit, that required the licensee to offer collateral to the issuer, then it is possible that if NRC were to draw on the letter of credit, the bank might seize the licensee's collateral which, in turn, might prevent the licensee from performing under the self-guarantee.

The combination of a parent or self-guarantee and an external sinking fund also appears to provide a relatively low-cost means for licensees to demonstrate financial assurance while continuing to gradually fund decommissioning costs over time (either on the current schedule or on an accelerated schedule). Because of the low costs of guarantees, however, allowing this combination of mechanisms could create an incentive for licensees to delay or cease payments into the sinking fund and, instead, to rely on the guarantee for as much of the cost as possible. Given the magnitude of typical decommissioning costs for reactors, this possibility could hinder the timely conduct of decommissioning. In other words, decommissioning could be significantly delayed if, because of a licensee's inadequate contributions to its sinking fund, a guarantor had to come up with large amounts of money at the time of decommissioning.

The NRC generally believes that it should not allow licensees to use parent company guarantees and self-guarantees in combination with each other to assure decommissioning obligations. Because parent companies typically consolidate the financial statements of all their subsidiaries into their own financial statements, combining parent company guarantees and self-guarantees could result in double counting of the same limited financial strength to pass separate financial tests (e.g., one for costs covered by a parent company guarantee, and one for costs covered by a self-guarantee).

In sum, the NRC has eliminated the prohibition on combining parent company or self-guarantees with external sinking funds. The NRC will also consider other combinations of mechanisms on a case-by-case basis when the aforementioned concerns are addressed.

K. Required Timing of Alternative Methods

Several commenters wrote that the NRC should allow affected licensees an extended period of time to secure alternative financial assurance mechanisms. One commenter stated that NRC's current regulations allow a

[2] In addition, firms providing guarantees must pass an underlying financial test which is not "divisible" under the regulations. For example, parent company guarantors must meet a criterion that they have tangible net worth at least equal to six times "the current decommissioning cost estimates (or prescribed amount if a certification is used)." Either a potential guarantor passes this criterion (and other similar and related criteria) in its entirety or the guarantor fails the test. If the guarantor cannot pass the criteria, then it is ineligible to provide a guarantee in any amount. In this case, combining the guarantee with another mechanism would not be an option. This final rule amends the financial test sections in Appendices A and C to 10 CFR Part 30 to address, in part, this issue.

licensee 30 days to develop a submittal describing how decommissioning funding will be assured if the licensee no longer satisfies a given criterion (e.g., the definition of "electric utility"). This commenter recommended that NRC allow licensees 180 days in these instances, and also suggested that NRC allow licensees to continue making payments to their existing decommissioning funds until NRC approves the alternative funding submittal. Another commenter stressed that NRC should allow "adequate transition time for legislative and regulatory changes to accommodate the new definition of 'electric utility'."

The comments presented the argument that licensees will need more time to obtain alternative financial assurance mechanisms (e.g., 180 days) than they would in the event of the cancellation of an existing mechanism (only 30 days). This argument ignores the fact that deregulation will not occur instantly and unexpectedly. Licensees are likely to have months or even years to evaluate whether they may be able to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body and what mechanisms they might use to demonstrate financial assurance if and when that occurs. Consequently, no additional time should be provided to licensees in response to this comment.

8. Federal Licensees

A. Applicability to Federal Licensees

A number of commenters argued that financial assurance requirements for electric utilities should apply equally to Federal licensees, that no special treatment should be afforded Federal licensees, and that all licensees should satisfy the same requirements. One stated explicitly that "Federal" licensees should be required to provide the same level of financial assurance as other power reactor licensees, but qualified his comment by stating that "the proposed rule should ensure that at such time as these Federal entities become private enterprises, they are subject to the definition of 'electric utility.' In doing so, they must provide the same measures of financial assurance currently required to electric utilities, i.e., they must provide the same level of external funding or other assurance that would otherwise have been required of them from the initial issuance of their operating license." This commenter apparently did not oppose the use of statements of intent by Federal licensees, until the point at which they become private.

The Tennessee Valley Authority (TVA), the only current Federal licensee for a nuclear power reactor, was the sole commenter that argued in favor of special provisions that would apply only to Federal licensees. It noted, in particular, that under Federal law it is required to charge rates for power that will produce gross revenues sufficient to cover all operating expenditures of the power system, and that such operating expenses are considered to include decommissioning costs. TVA's arguments are evaluated below.

B. Definition of "Federal Licensee"

Several commenters made identical, or almost identical, recommendations concerning the definition of Federal licensee. Each supported the intent of the definition, which they considered to be to exclude from the definition any Federal agency whose obligations do not constitute the obligations of the United States. However, each recommended that the definition be modified to define a Federal licensee as "any NRC licensee, the obligations of which are guaranteed by and supported by the full faith and credit of the United States Government." Each argued, without explaining fully, that the term "full faith and credit backing" is neither defined nor commonly used in other legislation relating to Federal agencies.

Presumably, the commenters who found the phrase "full faith and credit backing" ambiguous did so because it does not specify that *all* obligations of the entity are backed by the credit of the Federal Government, nor does it say explicitly that the obligations are "guaranteed," as does the proposed replacement definition. The proposed replacement definition thus is slightly more precise. Much of the suggested definition has been used previously and commonly in legislation pertaining to Federal agencies. Thus, it would have the advantage of removing any ambiguity that might arise from using a totally new definition. A preliminary search of the United States Code, Annotated, uncovered a number of situations in which the proposed phrase is used. For example, under Chapter 50 of Title 7, the Secretary of Agriculture is empowered under 7 U.S.C.A. 1928, to guarantee certain agricultural credit real estate loans and emergency loans. Section 1928 specifies that contracts of insurance or guarantee executed by the Secretary under Chapter 50 "shall be an obligation supported by the full faith and credit of the United States." Similarly, the Secretary of the Interior is empowered under Title 16 of the U.S. Code to insure certain loans of private lenders. Section 470d of Title 16 provides that "Any contract of insurance executed by the Secretary under this section * * * shall be an obligation supported by the full faith and credit of the United States. * * *" Finally, under Title 42, Chapter 7 (Social Security) of the U.S. Code, the Secretary of the Treasury can issue obligations for purchase by the social security trust fund. Section 401 of Title 42 provides that "the obligation is supported by the full faith and credit of the United States. * * *" The commenters appear to have identified the phrase generally used to describe such an obligation, and therefore replacement of the current definition of "Federal licensee" with the definition suggested by the commenters appears warranted.

TVA argued against the proposed definition of Federal licensee because the proposed definition would preclude TVA's use of the statement of intent. In its view, there are "ample reasons" to support the continued use of the statement of intent by TVA. In particular, TVA argued that with respect to decommissioning funding assurance, "the key fact is that Federal law requires TVA to adequately fund the conduct of TVA's power activities, and this includes operating, maintaining, and decommissioning its nuclear facilities." TVA pointed out that even before decommissioning funding assurance requirements from NRC, TVA was taking action to ensure that funds would be available to decommission its nuclear units. TVA argues, in effect, that a financial assurance requirement other than the statement of intent amounts to "imposing separate regulatory requirements to oversee the manner in which TVA is meeting its statutory requirements. * * *"

These arguments amount, in sum, to an assertion that because TVA is subject to an existing statutory requirement to fund decommissioning, the Commission should not impose any different, or additional, requirements. TVA maintains that the NRC should have reasonable assurance that TVA will have adequate funding to ensure the conduct of decommissioning activities "because Federal law requires TVA to provide such funds." (emphasis in original)

It also could be correctly said, however, that Federal law requires other reactor licensees to provide reasonable assurance of decommissioning funding. The purpose of financial assurance is to present a second line of defense, if the financial operations of the licensee are insufficient, by themselves, to ensure that sufficient funds are available to carry out decommissioning. TVA

apparently concedes that its obligations are not supported by the full faith and credit of the United States Government; therefore, if TVA cannot fund the decommissioning, the Federal Government is not obligated to do so. Although the TVA board has the authority to set electric power rates to meet power system obligations, including decommissioning, it may not, contrary to its assertions, have the "unfettered ability" to do this, because its markets may not support such rates. TVA noted that its current business plan recommends an offer to its distributor customers to change their power contracts after 5 years from a rolling 10-year term to a rolling 5-year term.

TVA appears to misunderstand the purpose of the statement of intent, which is to obtain a commitment by another, and superior, governmental entity that the obligations of the subordinate governmental entity will be paid by the superior entity if the subordinate entity cannot pay them. Absent such a commitment, which would be represented by support for the obligations by the full faith and credit of the United States, there is no "statement of intent" upon which TVA can "continue to be able to rely."

Following publication of this rule, the NRC will review TVA's current decommissioning financial assurance arrangements and determine whether any actions are required in light of the added definition of "Federal licensee." The publication of this rule, by itself, does not constitute an action of the NRC with respect to TVA's current decommissioning financial assurance.

9. Reporting on the Status of Decommissioning Funds

A. Use of Financial Accounting Standards Board (FASB) Standard

The commenters generally did not oppose reporting to NRC on the status of decommissioning funding assurance in accordance with the requirements of a final FASB promulgation, on the grounds (as expressed by NEI) that a standard reporting mechanism should be used that does not add unnecessary burden. However, several commenters did oppose a requirement that they use the preliminary FASB exposure draft, or any other FASB-based position that is not final. They argued that changes from the proposed to the final FASB standard, which cannot be predicted because the standard is still under development, could make it inappropriate for meeting NRC's endorsement. Unless the FASB standard is adopted soon, these commenters argued, other reporting options should be adopted. Some commenters suggested that regulatory language need not be changed, but that the contents of DG–1060 would need to be amended to reduce the reliance on the FASB draft.

Some commenters went further, and expressed criticisms of the FASB exposure draft, indicating that even if it became final in its current form they would not find it appropriate for use. In the view of these commenters, merely recognizing the liability and periodic expense for decommissioning, which is the focus of the FASB draft, is not sufficient to ensure adequate funding. In their view, the FASB standards establish accounting procedures but are not the appropriate computations for determining necessary cash flows for funding external trusts. One commenter stressed that the focus of the FASB draft, as well as issues concerning the appropriate discount rate, also made the FASB standard questionable for NRC's purposes.

Neither the timing nor the ultimate contents of a FASB standard can be predicted at this time, and therefore the conclusion is warranted that alternative requirements should be found. According to a FASB report of January 14, 1998, the Board reviewed the status of the project in its October 2, 1997, meeting and decided it should proceed toward either a second Exposure Draft or a final Statement. However, at its November 26, 1997, meeting, the Board eliminated certain key provisions in the exposure draft relating to the scope of the Statement. According to FASB's "Current Developments and Plans for 1998":

> FASB will be developing a refined definition of closure/removal costs that would be applicable to a more general class of long-lived assets than those covered by the Exposure Draft. The Board will also be addressing the question of whether the costs of closure/ removal obligations should be capitalized and will develop criteria to identify constructive obligations. At this time, there is no time frame regarding the issuance of a document or final statement.

Although the timing of future action on the draft is uncertain, reanalysis of the scope issue by the FASB staff during the first quarter of 1998, as well as FASB's statement that it is postponing other issues raised on the Exposure Draft until further progress is made on another Exposure Draft, suggests that action by FASB to issue a final Statement, or even a revised Exposure Draft, will be delayed for a considerable time. Notwithstanding any final FASB action, the NRC can proceed with its own requirement for reporting on the status of decommissioning funds.

B. Frequency of Reports

Most commenters endorsed "periodic" reports to monitor the status of decommissioning assurance. Several commenters, particularly those from State PUCs, supported requiring a report soon (nine months) after the rule becomes effective, and at least every two years thereafter. (Other commenters from utilities suggested every three years or every 5 years thereafter. The 5-year period was suggested to correspond to the recommended 5-year adjustment to site-specific cost estimates specified in Regulatory Guide 1.159.) A majority of the commenters also endorsed that utilities nearing decommissioning or in the process of decommissioning submit reports annually. However, commenters noted ambiguity in the requirement that reports should be submitted annually by licensees of plants that are within 5 years of their projected end of operations. Although agreeing with the concept of such annual reporting, they noted that "the projected end of operations" should be clarified so that it clearly covered premature shutdowns and not just plants within 5 years of the end of their operating licenses. Several State commissions submitted almost identical proposed language amending § 50.75(f) of the proposed rule to require reporting by licensees for a plant within 5 years of the projected end of operations, "or where conditions have changed such that it will close within 5 years (before the end of its licensed life) or has already closed (before the end of its licensed life) * * *." Requiring annual reporting on a calendar-year basis would, in the opinion of one commenter, reduce the administrative burden of annual reporting because that is how licensees generally gather and accumulate the required information. Another argued that reporting trust fund balances on an annual basis suggested that reports should be required by March 31 for the previous calendar year.

Other commenters noted that when State regulatory bodies require annual reporting on the status of decommissioning funds, as many do, NRC's interests are already protected. One commenter could find no added safety justification for requiring annual reporting within 5 years of decommissioning. A complete report could be required every 5 years, in the opinion of this commenter, with updates annually or biennially.

Another commenter recommended that NRC delay the reporting requirements until a Pacific Northwest National Laboratory (PNNL) study is final. However, the Commission's position is that such a delay would deny

the NRC and the public the benefits of the information required to be reported while conferring negligible benefits on licensees.

Given NRC's information needs, and the multi-million-dollar size of the contributions that utilities make annually to their decommissioning funds, the potential pay-off per hour of staff labor that NRC invests in monitoring of funds is likely to be significant. Thus, the NRC is adopting a biennial reporting requirement. NRC also is adopting commenter suggestions that the reporting frequency be increased for plants approaching the end of commercial operation and for plants where conditions have changed such that they will prematurely close within 5 years or have already prematurely closed before the end of their licensed life, or for plants involved in mergers/acquisitions.

C. Contents of Reports

Most of the commenters who addressed reporting did not question the need for reports on the status of decommissioning funds and they did not address in detail the contents of such reports. Similarly, most of the commenters who raised questions about reliance on the FASB draft for decommissioning status reporting did not recommend alternative reporting standards. Several commenters implicitly suggested that the contents of reports submitted to State PUCs would be sufficiently similar to NRC's requirements, by recommending that copies of State reports should be acceptable to NRC.

One commenter argued that NRC's proposed "per unit" reporting was unclear about whether individual licensees of a jointly owned plant would each be required to submit their own status reports, or whether the plant operator could submit reports on behalf of all co-licensees. The commenter suggested that having the operator submit the data for all owners could be the most efficient approach, assuming the aggregate of available funds is the most important question. In contrast, another commenter believed that it would be "prudent" for NRC to require annual filings from all co-owners. Requiring filings by all co-owners would provide NRC with more detailed information, but would also place on it the burden of combining and assessing the data. The NRC believes that plant owners and operators should decide who will submit the required information. However, even if all information is submitted by the operator, the information will need to be broken down by owner in order to evaluate each owner's contributions to decommissioning.

One commenter recommended a clarification to ensure that the amount accumulated to the date of the report means the "as of" date, and not the date of the report. The same commenter wanted to limit the report to the single item of accumulated trust fund balances, unless NRC had concerns, based on its knowledge of the plant, about whether the amount accumulated for decommissioning is sufficient. In that case, more detailed information could be required.

The comments did not address several issues raised by commenters on the NRC's Advance Notice of Proposed Rulemaking (ANPR) of April 8, 1996 (61 FR 15427) concerning the information needed by NRC to monitor the status of decommissioning funds. In particular, the comments on the proposed rule did not address the 50-plus reporting items suggested by commenters in response to the ANPR.

How the industry will understand the core concept of the reporting requirement, the "status of the decommissioning fund," is not clarified by the comments on the proposed rule. At least one commenter suggested that "status" means simply the "amount" of the decommissioning trusts. Other commenters may be suggesting, by their emphasis on the responsibility of an operator to coordinate information from several co-owners, and on the possibility that NRC might need to obtain follow-up information, that "status" can include a quantitative or qualitative assessment of the "adequacy" of the fund relative to required or estimated decommissioning costs. The extent of that assessment is not clarified by the comments received, which do not address whether "status" implies a general discussion provided by the licensee or a specific report prepared by the trustee. The NRC has addressed some of the commenters' concerns discussed above by modifying the final rule. Because of their level of detail, other potential concerns are better addressed by a regulatory guide. The NRC will consider issuing such guidance after evaluating the first set of reports received.

10. Rate of Return

NRC's proposed language in 10 CFR 50.75(e)(1)(i) and (ii) allows licensees to take credit for earnings on their prepaid decommissioning trust funds or external sinking funds using a 2 percent annual real rate of return from the time of the funds' collection through the decommissioning period. If the licensee's rate-setting authority authorizes the use of another rate, that rate would be used in projected earnings. By specifying that earnings can be credited "through the decommissioning period," NRC is allowing licensees to assume earnings credits for both the safe storage period and the period when funds flow out of the decommissioning financial assurance mechanisms.

Many commenters generally supported NRC's proposed changes in 10 CFR 50.75. Some described the rate as being reasonable, conservative, and consistent with FERC's policy of recognizing earnings and inflation. One commenter specifically endorsed the provision that allows licensees to use assumed rates of return that are approved by State regulatory bodies. A few commenters supported the changes but stated that licensees also should be given the flexibility to use a rate that is less than the proposed rate.

Other commenters did not support NRC's selection of the 2 percent rate. One commenter claimed that the proposed 2 percent rate might result in underfunding if it does not account for the effect of income taxes. More typically, commenters argued that the rate is too low and should be increased. Suggested rates were 3 percent and 7 percent. Two commenters noted that 3 percent and 7 percent discount rates are used in NRC's regulatory analysis guidance (in NUREG/BR–0058 and SECY 93–167). Other commenters stated that NRC should allow licensees to use any "realistic" rate of return or any rate they can justify, possibly in conjunction with periodic reevaluation of the funds collected. A few commenters argued that NRC should not specify a 2 percent rate of return during the period following operations (i.e., the safe storage and outflow periods) and that different rates should be allowed if specifically approved by a rate-setting authority.

As stated in the preamble to the proposed rule, the 2 percent real rate of return suggested by NRC is based on historical data on returns from U.S. Treasury issues, and represents "as close to a 'risk-free' return as possible." Although this rate may seem relatively low given that higher interest rates are frequently paid on common stocks and corporate bonds, the lower rates paid on Government securities pose considerably less risk and are likely to be achieved on a more consistent basis.

Given the need for "reasonable" assurance of decommissioning funding, there is little justification for selecting a rate greater than 2 percent. As shown in the table below, the historical average real return on long-term U.S.

Government bonds has been very close to 2 percent, and the historical average real return on "risk-free" U.S. Treasury Bills has been less than 1 percent. Based on this information, NRC would have difficulty justifying a higher rate.

REAL RATES OF RETURN FOR SAMPLE TIME PERIODS

Rate	U.S. treasury bills (percent)	Long-term government bonds (percent)
Current (1997)	3.49	13.91
Contemporary Average (1975–1994)	1.96	7.65
Long-Term Average (1926–1997)	0.6	2.1

Source: Ibbotson Associates, Chicago. Stocks, Bonds, Bills and Inflation: 1998 Yearbook, Table 4–1 and Table 6–8. Averages are calculated as geometric means.

The commenter's concern that 2 percent is less than the 7 percent and 3 percent discount rates called for in NRC's regulatory analysis guidance is not relevant.[3] Discount rates are used for capital investment analysis and other decision-making purposes but, if used to calculate contributions to decommissioning funds, could result in financial assurance levels that are not adequate to pay for all assured obligations.

11. Other

A. Cost Recovery through Rates

Several commenters opposed the inclusion of any mechanism that provides for a stranded cost bailout of the nuclear industry by ratepayers, arguing, among other things, that such a bailout would be unfair, destroy real competition, inhibit employment gains, slow the economic growth of more viable, cost effective, and less polluting power generating technologies, and harm the environment by allowing the continued operation of nuclear power stations that might otherwise shut down. These comments may reflect a misunderstanding of the roles played by NRC relative to State PUCs and FERC. Specifically, PUCs and FERC can determine whether decommissioning costs are stranded or whether they must be paid by ratepayers. NRC, unlike the PUCs, does not have the authority to prevent or to allow licensees to pass decommissioning costs on to customers. Thus, the issue of a "bailout" is not relevant to NRC. In the event that NRC allows financial assurance mechanisms whereby licensees recover decommissioning costs from ratepayers (e.g., external sinking funds funded by wire charges), the mechanism for rate recovery (e.g., the wire charges) must be authorized by a PUC or by FERC. Furthermore, the asserted consequences of a "stranded cost bailout" are unsupported.

B. Rate Recovery of Stranded Costs Using PNNL's Formula

One commenter suggested that utilities be allowed to recover in their rates only a portion of their decommissioning costs. Specifically, the commenter suggested allowing decommissioning costs to be recovered up to a maximum amount determined using PNNL's 1993 generic decommissioning cost formula. Estimated costs in excess of the generic PNNL estimate could not be recovered in rates and would have to be funded by shareholders. Also, in the event of premature shutdown, the commenter would make shareholders (rather than ratepayers) responsible for all decommissioning costs that are not yet funded, including any unfunded portion of the generic PNNL estimate.

The comment described above addresses how decommissioning costs, including stranded decommissioning costs, might equitably be divided between ratepayers and shareholders. However, the comment is not directly relevant to decommissioning financial assurance. From NRC's standpoint, it does not matter whether the source for a licensee's financial assurance is the licensee's ratepayers or its shareholders, but only that the licensee has provided adequate financial assurance for decommissioning. The question of how much of the decommissioning cost should be borne by ratepayers as opposed to shareholders is one that has traditionally been answered by State PUCs. NRC, unlike the PUCs, does not have the authority to direct licensees to recover costs from ratepayers. Although the NRC did sponsor the development of PNNL's 1993 generic decommissioning cost formula, this formula, like its predecessor in 10 CFR 50.75(c), was designed to help answer a different question, namely, what constitutes a reasonable minimum level of decommissioning assurance for a given reactor. Within this more limited context (and outside the scope of this rulemaking), NRC is currently evaluating the 1993 formula relative to 10 CFR 50.75(c).

Finding of No Significant Environmental Impact: Availability

The NRC is amending its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The amendments are in response to the likelihood of deregulation of the power generating industry and resulting questions on whether current NRC regulations concerning decommissioning funds and their financial mechanisms will need to be modified. The amendments allow a broader range of assurance mechanisms than under existing regulations for reactor licensees that lose the ability to recover decommissioning costs through regulated rates, add definitions of "Federal licensee" to address the issue of which licensees may use statements of intent and other relevant terms, and require power reactor licensees to report periodically on the status of their decommissioning funds and on the changes in their external trust agreements. Also, the amendments allow licensees to take credit for the actual and projected earnings on decommissioning trust funds.

These changes would have the following effects on nuclear power reactor licensees: (1) Potentially requiring licensees who have been "deregulated" to secure decommissioning financial assurance instruments that provide full *current* assurance for projected decommissioning costs, (2) limiting the types of licensees that can qualify for the use of Statements of Intent to satisfy decommissioning financial assurance requirements, (3) requiring periodic reporting on the status of their accumulation of decommissioning funds, thus leading to the potential for the NRC to require some remedial action

[3] NUREG/BR–0058 generally calls for the use of a 7 percent discount rate, which is the rate recommended by the Office of Management and Budget (OMB), in the estimation of values and impacts of a regulatory action. NUREG/BR–0058 also suggests use of an alternative discount rate of 3 percent for sensitivity analysis purposes and for cases in which costs occur over a period of more than 100 years.

if the licensee's actions are inadequate, and (4) permitting licensees to assume a real rate of return up to 2 percent per annum, or such other rate as is permitted by a PUC or the FERC, on their accumulated funds. These actions are of the type focused upon financial assurances and mechanisms to ensure funding for decommissioning and are not actions that would have any effect upon the human environment. Neither this action nor the alternatives considered in the Regulatory Analysis supporting this final rule would lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities' (NUREG–0586, August 1988).[4]

Promulgation of these rule changes will not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted in reaching this determination, and the NRC staff is not aware of any other documents related to consideration of whether there would be any environmental impacts from the action. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The public reporting burden for this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at bjs1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–(3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis of this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the Regulatory Analysis at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Brian J. Richter, Office of Nuclear Reactor Regulation (O–10 H5), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail bjr@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The Regulatory Analysis for the final rule also constitutes the documentation for the evaluation of backfit requirements, and no separate backfit analysis has been prepared. As defined in 10 CFR 50.109, the backfit rule applies to

* * * modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position * * *.

The amendments to NRC's requirements for the financial assurance of decommissioning of nuclear power plants allow a broader range of assurance mechanisms for reactor licensees who lose their ability to recover decommissioning costs through regulated rates and fees or other mandatory charges established by a regulatory body than previously, and define "Federal licensee." The amendments also add several associated definitions; add new reporting requirements pertaining to the use of prepayment and external sinking funds; impose new reporting requirements for power reactor licensees on the status of decommissioning funding that specify the timing and contents of such reports; and permit power reactor licensees to take credit for up to a 2 percent annual real rate of return (or another rate if permitted by their rate regulators) on funds set aside for decommissioning from the time the funds are set aside through the end of the decommissioning period.

Although some of the changes to the regulations are reporting requirements, which are not covered by the backfit rule, other elements in the changes are considered backfits because they would modify, supplement, or clarify the regulations with respect to: (1) Acceptable decommissioning funding options under various scenarios; and (2) which licensees may use statements of intent. The Commission has concluded, on the basis of the documented evaluation required by 10 CFR 50.109(a)(4) and set forth in the Regulatory Analysis, that the new or modified requirements are necessary to ensure that nuclear power reactor licensees provide for adequate protection of the health and safety of the public in face of a changing competitive and regulatory environment not envisioned when the reactor decommissioning funding regulations were promulgated and that the changes to the regulations are in accord with the common defense and security. Therefore, the NRC has determined to treat this action as an adequate protection backfit under 10 CFR 50.109(a)(4)(ii). Consequently, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3)

[4] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW. (Lower Level) Washington, DC 20555–0001; telephone (202) 634–3273; fax (202) 634–3343. Copies may be purchased at current rates from the U.S. Government Printing Office, PO Box 370892, Washington, DC 20402–9328; telephone (202) 512–2249; or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

do not apply. Further, these changes to the regulations are required to satisfy 10 CFR 50.109(a)(5).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear Materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30 and 50.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In 10 CFR part 30, appendix A paragraphs II.A.1(ii), (iv), II.A.2(ii), and (iv) are revised to read as follows:

Appendix A—Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

* * * * *

II. Financial Test

A. * * *

1. * * *

(ii) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used), or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts thereof (Tangible net worth shall be calculated to exclude the net book value of the nuclear unit(s)); and

* * * * *

(iv) Assets located in the United States amounting to at least 90 percent of the total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used), or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts thereof.

2. * * *

(ii) Tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used), or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts thereof (Tangible net worth shall be calculated to exclude the net book value of the nuclear unit(s)); and

* * * * *

(iv) Assets located in the United States amounting to at least 90 percent of the total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used), or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts thereof.

* * * * *

3. In 10 CFR part 30 appendix C, paragraphs II.A.(1) and (2) are revised to read as follows:

Appendix C—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

* * * * *

II. Financial Test

A. * * *

(1) Tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used), or, for a power reactor licensee, at least 10 times the amount of decommissioning funds being assured by a self guarantee, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor for the total of all reactor units or parts thereof (Tangible net worth shall be calculated to exclude the net book value of the nuclear unit(s)).

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used), or, for a power reactor licensee, at least 10 times the amount of decommissioning funds being assured by a self guarantee, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor for the total of all reactor units or parts thereof.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 50.2, the definitions of *Cost of service regulation*, *Federal licensee*, *Incentive regulation*, *Non-bypassable charges*, and *Price-cap regulation* are added in alphabetical order to read as follows:

§ 50.2 Definitions.

* * * * *

Cost of service regulation means the traditional system of rate regulation, or similar regulation, including "price cap" or "incentive" regulation, in which a rate regulatory authority generally allows an electric utility to charge its customers the reasonable and prudent costs of providing electricity services, including capital, operations, maintenance, fuel, decommissioning, and other costs required to provide such services.

* * * * *

Federal licensee means any NRC licensee, the obligations of which are guaranteed by and supported by the full faith and credit of the United States Government.

* * * * *

Incentive regulation means the system of rate regulation in which a rate regulatory authority establishes rates that an electric generator may charge its customers that are based on specified performance factors, in addition to cost-of-service factors.

* * * * *

Non-bypassable charges mean those charges imposed over an established time period by a Government authority that affected persons or entities are required to pay to cover costs associated with the decommissioning of a nuclear power plant. Such charges include, but are not limited to, wire charges, stranded cost charges, transition charges, exit fees, other similar charges, or the securitized proceeds of a revenue stream.

* * * * *

Price-cap regulation means the system of rate regulation in which a rate regulatory authority establishes rates that an electric generator may charge its customers that are based on a specified maximum price of electricity.

* * * * *

6. In § 50.43, paragraph (a) is revised to read as follows:

§ 50.43 Additional standards and provisions affecting class 103 licenses for commercial power.

* * * * *

(a) The NRC will:

(1) Give notice in writing of each application to the regulatory agency or State as may have jurisdiction over the rates and services incident to the proposed activity;

(2) Publish notice of the application in trade or news publications as it deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in the utilization or production facility; and

(3) Publish notice of the application once each week for 4 consecutive weeks in the **Federal Register**. No license will be issued by the NRC prior to the giving of these notices and until 4 weeks after the last notice is published in the **Federal Register**.

* * * * *

7. In § 50.54, the introductory text of paragraph (w) is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each power reactor licensee under this part for a production or utilization facility of the type described in §§ 50.21(b) or 50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the NRC that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, provided that:

* * * * *

8. In § 50.63, paragraph (a)(2) is revised to read as follows:

§ 50.63 Loss of alternating current power.

(a) * * *

(2) The reactor core and associated coolant, control, and protection systems, including station batteries and any other necessary support systems, must provide sufficient capacity and capability to ensure that the core is cooled and appropriate containment integrity is maintained in the event of a station blackout for the specified duration. The capability for coping with a station blackout of specified duration shall be determined by an appropriate coping analysis. Licensees are expected to have the baseline assumptions, analyses, and related information used in their coping evaluations available for NRC review.

* * * * *

9. In § 50.73, paragraph (b)(2)(ii)(J)(*2*)(*iv*) is revised to read as follows:

§ 50.73 Licensee event report system.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(J) * * *

(*2*) * * *

(*iv*) The type of personnel involved (i.e., contractor personnel, licensed operator, nonlicensed operator, other licensee personnel).

* * * * *

10. In § 50.75, paragraphs (a), (b), (d), and (e) are revised, and paragraphs (f)(1), (2), and (3) are redesignated as paragraph (f)(2), (3), and (4) and a new paragraph (f)(1) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. For power reactor licensees, reasonable assurance consists of a series of steps as provided in paragraphs (b), (c), (e), and (f) of this section. Funding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c) of this section, are in addition to, and not substitution for, other requirements, and are not intended to be used, by themselves, by other agencies to establish rates.

(b) Each power reactor applicant for or holder of an operating license for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k) of this part.

(1) The report must contain a certification that financial assurance for decommissioning will be (for a license applicant) or has been (for a license holder) provided in an amount which may be more but not less than the amount stated in the table in paragraph (c)(1) of this section.

(2) The amount to be provided must be adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section.

(3) The amount must use one or more of the methods described in paragraph (e) of this section as acceptable to the NRC.

(4) The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC.

* * * * *

(d)(1) Each non-power reactor applicant for or holder of an operating license for a production or utilization

facility shall submit a decommissioning report as required by § 50.33(k) of this part.

(2) The report must:

(i) Contain a cost estimate for decommissioning the facility;

(ii) Indicate which method or methods described in paragraph (e) of this section as acceptable to the NRC will be used to provide funds for decommissioning; and

(iii) Provide a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility.

(e)(1) Financial assurance is to be provided by the following methods.

(i) Prepayment. Prepayment is the deposit made preceding the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities or other payment acceptable to the NRC. A licensee may take credit for projected earnings on the prepaid decommissioning trust funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future fund needs.

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment acceptable to the NRC. A licensee may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of such costs, may make use of these methods only for that portion of such costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(A) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by "cost of service" or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are assumed to meet this condition.

(B) By a licensee whose source of revenues for its external sinking fund is a "non-bypassable charge," the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or 50.82 of this part.

(iii) A surety method, insurance, or other guarantee method:

(A) These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(*1*) The surety method or insurance must be open-ended, or, if written for a specified term, such as 5 years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the NRC, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the NRC within 30 days after receipt of notification of cancellation.

(*2*) The surety or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the NRC. An acceptable trustee includes an appropriate State or Federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(B) A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30.

(C) For commercial companies that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to 10 CFR part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to 10 CFR part 30. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30. A guarantee by the applicant or licensee may not be used in any situation in which the applicant or licensee has a parent company holding majority control of voting stock of the company.

(iv) For a power reactor licensee that is a Federal licensee, or for a non-power reactor licensee that is a Federal, State, or local government licensee, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(v) Contractual obligation(s) on the part of a licensee's customer(s), the total amount of which over the duration of the contract(s) will provide the licensee's total share of uncollected funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or § 50.82. To be acceptable to the NRC as a method of decommissioning funding assurance, the terms of the contract(s) shall include provisions that the electricity buyer(s) will pay for the decommissioning obligations specified in the contract(s), notwithstanding the operational status either of the licensed power reactor to which the contract(s) pertains or force majeure provisions. All proceeds from the contract(s) for decommissioning funding will be deposited to the external sinking fund. The NRC reserves the right to evaluate the terms of any contract(s) and the financial qualifications of the contracting entity(ies) offered as assurance for decommissioning funding.

(vi) Any other mechanism, or combination of mechanisms, that provides, as determined by the NRC upon its evaluation of the specific circumstances of each licensee submittal, assurance of decommissioning funding equivalent to

that provided by the mechanisms specified in paragraphs (e)(1)(I)–(iv) of this section. Licensees who do not have sources of funding described in paragraph (e)(1)(ii) of this section may use an external sinking fund in combination with a guarantee mechanism, as specified in paragraph (e)(1)(iii) of this section, provided that the total amount of funds estimated to be necessary for decommissioning is assured.

(2) The NRC reserves the right to take the following steps in order to ensure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and, either independently or in cooperation with the FERC and the licensee's State PUC, take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for the accumulation of decommissioning funds.

* * * * *

(f)(1) Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 1999, and at least once every 2 years thereafter on the status of its decommissioning funding for each reactor or part of a reactor that it owns. The information in this report must include, at a minimum: the amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75(b) and (c); the amount accumulated to the end of the calendar year preceding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying pursuant to paragraph (e)(1)(ii)(C) of this section; any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and any material changes to trust agreements. Any licensee for a plant that is within 5 years of the projected end of its operation, or where conditions have changed such that it will close within 5 years (before the end of its licensed life), or has already closed (before the end of its licensed life), or for plants involved in mergers or acquisitions shall submit this report annually.

* * * * *

Dated at Rockville, MD this 16th day of September, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–25278 Filed 9–21–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–55–AD; Amendment 39–10761; AD 98–19–20]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–7B and –7B/2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFM International CFM56–7B and –7B/2 series turbofan engines. This action requires initial and repetitive inspections of certain hydromechanical unit (HMU) overspeed governor (OSG) spool valves for out-of-specification conditions or the presence of heavy contact or galling on the spool valve, and optional installation of an improved HMU as a terminating action to the inspections. This amendment is prompted by a report of a flameout that occurred on a flight test engine due to a failed HMU OSG spool valve shaft. The actions specified in this AD are intended to prevent failure of the HMU OSG spool valve shaft, and subsequent engine flameout.

DATES: Effective October 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–55–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.

The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of an engine flameout on a CFM International CFM56–7B series turbofan flight test engine. Due to the similarity of the engines, CFM56–7B/2 series engines could also be affected. Investigation revealed that the flameout occurred as a result of a failed hydromechanical unit (HMU) overspeed governor (OSG) spool valve shaft. The shaft failed as a result of the spinning spool's contact with the valve sleeve inner diameter. Further investigation revealed out-of-specification conditions may exist that can contribute to rotor contact. This condition, if not corrected, could result in a failure of the HMU OSG spool valve shaft, and subsequent engine flameout.

The FAA has reviewed and approved the technical contents of CFM International CFM56–7B Service Bulletin (SB) No. 73–016, Revision 2, dated August 10, 1998, that describes procedures for inspection of HMU OSG spool valves for out-of-specification conditions or the presence of heavy contact or galling on the spool valve.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent a failure of the HMU OSG spool valve shaft, and subsequent engine flameout. This AD requires initial and repetitive inspections of HMU OSG spool valves for out-of-specification conditions or the presence of heavy contact or galling on the spool valve. The optional installation of an improved HMU, Part Number (P/N) 1853M56P06 (AlliedSignal P/N 442098), constitutes terminating action to the inspection requirements. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–55–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

98–19–20 CFM International: Amendment 39–10761. Docket 98–ANE–55–AD.

Applicability: CFM International CFM56–7B and –7B/2 series turbofan engines, with hydromechanical unit (HMU), Part Number (P/N) 1853M56P04 (AlliedSignal P/N 442008) or 1853M56P05 (Allied Signal P/N 442026), installed. These engines are installed on, but not limited to Boeing 737–600/–700/–800 series aircraft.

Note 1: 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 failure of the HMU overspeed governor (OSG) spool valve shaft, and subsequent engine flameout, accomplish the following:

(a) Inspect HMU, P/N 1853M56P04 (AlliedSignal P/N 442008) and 1853M56P05 (Allied Signal P/N 442026), in accordance with CFM International Service Bulletin (SB) No. 73–016, Revision 2, dated August 10, 1998, as follows:

(1) For engines with HMUs that have not been previously inspected in accordance with any revision level of CFM International SB No. 73–016, inspect prior to accumulating 300 hours time since new.

(2) For engines with HMUs that have been previously inspected in accordance with any revision level of CFM International SB No. 73–016, inspect within 300 hours time in service (TIS) since the last inspection in accordance with the SB.

(b) Thereafter, for HMUs that have been inspected in accordance with paragraph (a) of this AD, inspect the HMU at intervals not to exceed 300 hours TIS since the last inspection in accordance with CFM International SB No. 73–016, Revision 2, dated August 10, 1998.

Note 2: The inspections required in paragraphs (a) and (b) of this AD have been published in Chapter 05 of the CFM56–7B series Engine Shop Manual, CFMI–TP.SM.10.

(c) Installation of HMU, P/N 1853M56P06 (AlliedSignal P/N 442098), constitutes terminating action to the inspection requirements 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, Engine 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, Engine 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 Engine 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 requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following CFM International SB:

Document No.	Pages	Revision	Date
CFM56–7B SB No. 73–016.	1–6	2	August 10, 1998.

Total pages: 6.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of

Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 7, 1998.

Issued in Burlington, Massachusetts, on September 11, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–25007 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–33–AD; Amendment 39–10762; AD 98–18–21]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc RB211 Trent 800 series turbofan engines. This action requires initial and repetitive ultrasonic inspections of fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This amendment is prompted by reports of multiple fan blade root cracks in several factory test engines. The actions specified in this AD are intended to prevent fan blade failure, which could result in multiple fan blade release, uncontained engine failure, and possible damage to the aircraft.

DATES: Effective October 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before November 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–33–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.

The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) RB211 Trent 875–17, RB211 Trent 877–17, RB211 Trent 884–17, RB211 Trent 892–17, and RB211 Trent 892B–17 series turbofan engines. The CAA advises that during inspection of 4 sets of fan blades from 4 separate factory test engines, including flight test, cracks were discovered in several of the fan blade root sections. Two engine sets contained multiple numbers of fan blades exhibiting blade root cracks and two engine sets contained one fan blade each exhibiting blade root cracks. The investigation revealed that the cracks are caused by higher than expected stresses in the fan blade root section at high fan speeds. This condition, if not detected, could result in fan blade failure which could result in multiple fan blade release, uncontained engine failure, and possible damage to the aircraft.

There are currently no affected engines operated on aircraft of U.S. registry. This AD, then, is necessary to require accomplishment of the required actions for engines installed on aircraft currently of foreign registry that may someday be imported into the U.S. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days.

R–R has issued Service Bulletin (SB) No. RB.211–72–C445, Revision 2, dated July 3, 1998, that specifies procedures for inspections of fan blade roots for cracks. The CAA classified this SB as mandatory and issued AD 003–04–98 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the AD requires initial and repetitive ultrasonic inspections of fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This AD is considered interim action, as future rulemaking may be forthcoming that would require installing redesigned fan blades. The actions would be required to be accomplished in accordance with the SB described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–33–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

98–18–21 Rolls-Royce, plc: Amendment 39–10762. Docket 98–ANE–33–AD.

Applicability: Rolls-Royce, plc (R–R) RB211 Trent 875, RB211 Trent 877, RB211 Trent 884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines, with fan blades, part numbers FK 23750, FK 25975, FK 25548, and FK 26757, installed. These engines are installed on but not limited to Boeing 777 series aircraft.

Note 1: 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 (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 prevent fan blade failure, which could result in multiple fan blade release, uncontained engine failure, and possible damage to the aircraft, accomplish the following:

(a) Perform initial and repetitive inspections of fan blade roots for cracks, in accordance with R–R Service Bulletin (SB) No. RB.211–72–C445, Revision 2, dated July 3, 1998, as follows:

(1) For Trent 875 series engines, as follows:

(i) Initially inspect prior to accumulating 3,000 cycles since new (CSN).

(ii) Thereafter, inspect at intervals not to exceed 500 cycles in service (CIS) since last inspection.

(2) For Trent 877 series engines, as follows:

(i) Initially inspect prior to accumulating 2,500 CSN.

(ii) Thereafter, inspect at intervals not to exceed 500 CIS since last inspection.

(3) For Trent 884 series engines, as follows:

(i) Initially inspect prior to accumulating 1,500 CSN.

(ii) Thereafter, inspect at intervals not to exceed 500 CIS since last inspection.

(4) For Trent 892 and 892B series engines, as follows:

(i) Initially inspect prior to accumulating 1,000 CSN.

(ii) Thereafter, inspect at intervals not to exceed 300 CIS since last inspection.

(5) Remove from service cracked fan blades and replace with serviceable parts.

(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, Engine 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, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be performed in accordance with the following R–R SB:

Document No.	Pages	Revision	Date
RB.211–72–C445.	1–8	2	July 3, 1998.
Appendix 1.	1–4	2	July 3, 1998.
Appendix 2.	1–4	2	July 3, 1998.

Total pages: 16.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 7, 1998.

Issued in Burlington, Massachusetts, on September 11, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–25006 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–169–AD; Amendment 39–10780; AD 98–20–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires repetitive inspections to detect corrosion on the fuselage skin panels that surround the emergency exits immediately aft of the wing; and follow-on corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion on the fuselage skin panels that surround the emergency exits immediately aft of the wing, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Airbus Model A300 series airplanes was published in the **Federal Register** on July 31, 1998 (63 FR 40850). That action proposed to require repetitive inspections to detect corrosion on the fuselage skin panels that surround the emergency exits immediately aft of the wing; and follow-on corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,880; or $120 per airplane, per inspection cycle.

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.

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:

98–20–13 Airbus Industrie: Amendment 39–10780. Docket 98–NM–169–AD.

Applicability: Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–301, Revision 1, dated February 20, 1997; 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 detect and correct corrosion on the fuselage skin panels that surround the emergency exits immediately aft of the wing, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a visual inspection to detect corrosion on the fuselage skin panels that surround the emergency exits immediately aft of the wing, between frames 55 to 58, and from stringers 13 to 31, left and right; in accordance with Airbus Industrie Service Bulletin A300–53–301, dated September 28, 1995, or Revision 1, dated February 20, 1997.

(1) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 18 months on all areas on the fuselage skin panels that do not have a doubler installed or areas that have not been partially or completely replaced.

(2) If any corrosion is detected, prior to further flight, accomplish rework and perform a residual thickness measurement, in accordance with the service bulletin.

(i) If the measurement does not exceed the allowable limits specified by the Accomplishment Instructions of the service bulletin, repeat the inspection thereafter at intervals not to exceed 18 months.

(ii) If the measurement does exceed the allowable limits specified by the Accomplishment Instructions of the service bulletin, prior to further flight, repair using a doubler, or replace the affected areas of the skin panel the installation of a new skin panel (partially or completely), in accordance

with the service bulletin. Accomplishment of either action constitutes terminating action for the repetitive inspections required by this AD for the repaired area or the replaced panel sections only.

Note 2: Inspections, repairs, and replacements of the fuselage skin panels that surround the emergency exits immediately aft of the wing that have been accomplished prior to the effective date of this AD, in accordance with Airbus Industrie Service Bulletin A300–53–301, dated September 28, 1995, are considered acceptable for compliance with the applicable action specified in this AD.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) The actions shall be done in accordance with Airbus Industrie Service Bulletin A300–53–301, dated September 28, 1995, or Airbus Industrie Service Bulletin A300–53–301, Revision 1, dated February 20, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–357–231(B), dated November 19, 1997.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25031 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–244–AD; Amendment 39–10775; AD 98–20–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes, that requires visual and eddy current inspections to detect cracking of the frame-to-longeron attachment area, the frame-to-skin shear clips at certain fuselage stations, and the fuselage bulkhead at the front spar of the engine pylon in the aft fuselage; and repair, if necessary. This AD also requires certain modifications which, when accomplished, will terminate the requirement for inspections. This amendment is prompted by reports indicating that fatigue cracking has occurred at those areas. The actions specified by this AD are intended to prevent such fatigue cracking, which could cause damage to adjacent structure and result in reduced structural integrity of the airplane.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; 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 certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes was published in the **Federal Register** on January 27, 1997 (62 FR 3837). That action proposed to require eddy current inspections to detect cracking of the frame-to-longeron attachment area, the frame-to-skin shear clips at certain fuselage stations, and the fuselage bulkhead at the front spar of the engine pylon in the aft fuselage; and repair, if necessary. That action also proposed to require certain modifications, which, when accomplished, would terminate the requirement for inspections.

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.

Requests Concerning Cost Impact Information

Three commenters object to the FAA's estimated cost of inspection and modification, and state that the time required to perform the actions is actually greater than that specified in the cost impact information of the proposed AD. One commenter requests that the compliance time for the proposed initial inspections to be accomplished in accordance with Revision 05 of McDonnell Douglas Service Bulletin DC9–53–140 and Revision 2 of McDonnell Douglas DC–9 Service Bulletin 53–150, and for the repetitive inspections to be accomplished in accordance with Revision 2 of McDonnell Douglas DC–9 Service Bulletin 53–150, be increased from 4,000 to 5,000 landings. According to the commenter, that increase would allow the inspections to be performed in conjunction with related scheduled maintenance activities and thereby lower the cost of compliance.

Another commenter requests that accurate cost impact figures be reflected in the final rule since it will have a significant economic impact on operators. One other commenter disagrees with the labor estimates provided in the proposal, and notes that the terminating action (modification) figures omit access and close up time. The commenter does not object to the

terminating action, but suggests that the FAA withdraw the proposed AD until the proper figures are developed to ascertain financial impact.

The FAA does not concur with these commenters' requests. With regard to the commenter's request to extend the compliance times for economic reasons, the FAA has determined that 4,000 landings for the initial and repetitive inspections is the maximum number of landings in which the safety of the affected airplanes can be ensured. The commenters provided no data indicating that extending the compliance time would result in an acceptable level of safety. Additionally, the number of work hours necessary to accomplish the required actions was provided to the FAA by the manufacturer based on the best data available to date. The FAA acknowledges that the cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Clarification of Requirements of This AD

One commenter notes that the airplanes affected by paragraph (a) of the proposal should be clarified to exclude airplanes covered by paragraph (b) by adding the phrase "except as provided by paragraph (b)." Additionally, the commenter states that the requirement for only paragraph (a)(1), to be accomplished prior to or in conjunction with paragraph (a)(2), is unacceptable, since it negates the inspection provision allowed in paragraph (b). The commenter suggests that compliance with either paragraph (a)(1) or (b) is acceptable and should be so stated.

Two commenters also note that the compliance time for the initial inspection in accordance with McDonnell Douglas DC–9 Service Bulletin 53–150 should include provisions for airplanes inspected previously in accordance with McDonnell Douglas Corrosion Prevention Control Program (CPCP).

The FAA finds that clarification of these requirements is necessary. The proposed AD does not clearly specify that, for airplanes subject to the requirements of paragraph (b), the actions specified in paragraph (a)(1) of the proposed AD are not required since those actions are the same. Additionally, although the proposed AD specifies that the requirements of paragraph (a)(1) must be accomplished prior to or in conjunction with paragraph (a)(2), if an operator accomplishes paragraph (b) of the proposal, the requirements of that paragraph also must be accomplished prior to or in conjunction with paragraph (a)(2) of the proposed AD. The FAA concurs that if inspections have been accomplished previously in accordance with the CPCP, credit should be given to operators in order to extend the compliance time for accomplishment of McDonnell Douglas DC–9 Service Bulletin 53–150, as specified in paragraphs (a)(2) and (d) of the proposed rule.

In order to address these considerations, this final rule has been reformatted as follows:

—Paragraph (a) of the final rule addresses only airplanes listed in McDonnell Douglas Service Bulletin DC9–53–140, including those that have been inspected previously using visual techniques in accordance with CPCP. This new paragraph (a) requires accomplishment of the inspections required in Service Bulletin DC9–53–140.

—Paragraph (b) of the final rule addresses only airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–150, including those that have been inspected previously using visual techniques in accordance with CPCP. This new paragraph (b) requires accomplishment of the inspections required in DC–9 Service Bulletin 53–150.

—Paragraphs (a) and (b) of this final rule address all requirements contained previously in paragraphs (a), (b), (c), and (d) of the proposed rule.

Requirements of This AD and AD 96–10–11

The commenters point out conflicts between the requirements of this proposed AD and AD 96–10–11. Two commenters suggest that the proposed AD should state clearly that it either supersedes the modification requirements of AD 96–10–11 (in accordance with McDonnell Douglas Service Bulletin DC9–53–140 and McDonnell Douglas DC–9 Service Bulletin 53–150), or that it provides an alternative method of compliance with that AD.

One commenter recommends changing the proposal to require only the repetitive inspections or, alternatively, to remove the actions specified in the two service bulletins discussed previously from AD 96–10–11. The commenter states that the potential overlap of compliance times specified in this proposed AD and in AD 96–10–11 will cause confusion and could result in airplanes being out of compliance.

The FAA finds that clarification is necessary. The FAA does not intend that duplicative requirements be included in AD 96–10–11 and this final rule. Therefore, since accomplishment of the modification specified in McDonnell Douglas DC–9 Service Bulletin 53–150 is already required by AD 96–10–11, the FAA has revised paragraph (d) of this final rule to remove that modification requirement from this AD. [The modification requirement was specified in paragraph (f)(2) of the proposed rule.] Additionally, costs associated with accomplishment of that modification have been removed from the cost impact information, below.

However, accomplishment of the modification described in Revision 3 of McDonnell Douglas Service Bulletin DC9–53–140 is required by AD 96–10–11, whereas this AD requires accomplishment of Revision 05 of that service bulletin. The effectivity listing of Revision 05 of the service bulletin identifies additional airplanes that are subject to the identified unsafe condition. In light of this, the FAA finds that the modification described in that service bulletin must be accomplished on the additional airplanes identified in Revision 05 of the service bulletin, and has revised paragraph (d) of this final rule [paragraph (f)(1) of the proposal] to include that requirement. Further, a note has been added to this final rule to indicate that the modification requirement for airplanes identified in Revision 3 of the service bulletin is specified in AD 96–10–11.

In addition, the final rule has been revised to include a new paragraph (e), which states that accomplishment of the inspection requirements of this AD constitute terminating action for the corresponding inspection requirements of AD 96–10–11.

Request To Allow DER Approval of Certain Repairs

One commenter requests that the proposed AD be revised to allow approval of repairs not addressed in the cited service bulletins by a McDonnell Douglas Designated Engineering Representative (DER), instead of the Manager of the Los Angeles Aircraft Certification Office (ACO). The commenter states that this provision

would result in a more efficient and expeditious repair approval process.

The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not currently authorized to make the discretionary determination as to what the applicable requirement is. However, the FAA has issued a notice (N 8110.72, dated March 30, 1998), which provides guidance for delegating authority to certain type certificate holder structural DER's to approve alternative methods of compliance for AD-required repairs and modifications of individual airplanes. The FAA is currently working with Boeing, Douglas Products Division (DPD), to develop the implementation process for delegation of approval of alternative methods of compliance in accordance with that notice. Once this process is implemented, approval authority for alternative methods of compliance can be delegated without revising 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 changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 569 McDonnell Douglas Model DC–9 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 403 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections on U.S. operators is estimated to be $145,080, or $360 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 174 work hours per airplane to accomplish the required modification of longeron-to-frame attachment area and the frame-to-skin shear clips of the aft fuselage. The cost of required parts will differ, depending on whether the airplane is categorized as a Group 1 airplane or a Group 2 airplane, as defined in the applicable service bulletin. Required parts will cost approximately $13,669 per airplane for Group 1 airplanes, and $10,285 per airplane for Group 2 airplanes. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $24,109 per airplane for Group 1 airplanes, and $20,725 per airplane for Group 2 airplanes.

The cost impact figures discussed above are 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.

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:

98–20–08 McDonnell Douglas: Amendment 39–10775. Docket 96–NM–244–AD.

Applicability: Model DC–9–10, –20, –30, –40, –50 series airplanes, and C–9 (military) 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 (f) 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 ensure that fatigue cracking of the frame-to-longeron attachment area and the frame-to-skin shear clips in the aft fuselage is detected and corrected in a timely manner so as to prevent damage to adjacent structure, which could result in loss of the capability of the engine pylon to support engine loads and possible separation of the engine from the airplane, accomplish the following:

(a) For airplanes listed in McDonnell Douglas Service Bulletin DC9–53–140, Revision 05, dated February 15, 1996: Perform an eddy current inspection to detect cracking of the longeron-to-frame attachment area and frame-to-skin shear clips of the aft fuselage, in accordance with the Accomplishment Instructions of that service bulletin at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. For airplanes subject to the requirements of paragraph (b) of this AD, the inspection shall be accomplished prior to, or in conjunction with, accomplishment of that paragraph. Thereafter, repeat the inspection at intervals not to exceed 12,500 landings until the modification specified in paragraph (d) of this AD is accomplished.

(1) For airplanes that *have not* been previously inspected using visual inspection techniques in accordance with McDonnell Douglas Corrosion Prevention Control Program (CPCP), Document MDC–K4606, Revision 1, dated December 1990, perform the initial inspection prior to the accumulation of 30,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that *have* been previously inspected using visual inspection techniques in accordance with McDonnell Douglas CPCP, perform the initial inspection within 8,500 landings after the previous visual inspection, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(b) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–150,

Revision 2, dated February 27, 1991: Perform a visual and eddy current inspection to detect cracking of the fuselage bulkhead at the front spar of the engine pylon of the aft fuselage, in accordance with the Accomplishment Instructions of that service bulletin, at the time specified in subparagraph (b)(1) or (b)(2) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed 4,000 landings until the modification specified in the service bulletin (and required by AD 96–10–11) is accomplished.

(1) For airplanes that *have not* been previously inspected using visual inspection techniques in accordance with McDonnell Douglas Corrosion Prevention Control Program (CPCP), Document MDC–K4606, Revision 1, dated December 1990, perform the initial inspection prior to the accumulation of 30,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that *have* been previously inspected using visual inspection techniques in accordance with McDonnell Douglas CPCP, perform the initial inspection within 5,000 landings after the previous visual inspection, or within 4,000 landings after the effective date of this AD, which ever occurs later.

(c) If any cracking is detected during any inspection required by this AD, prior to further flight, repair the cracking in accordance with either McDonnell Douglas Service Bulletin DC9–53–140, Revision 05, dated February 15, 1996; or McDonnell Douglas DC–9 Service Bulletin 53–150, Revision 2, dated February 27, 1991; as applicable.

(d) For airplanes that are identified in McDonnell Douglas Service Bulletin DC9–53–140, Revision 05, dated February 15, 1996, but are not identified in Revision 3 of that service bulletin: Prior to the accumulation of 86,000 total landings, or within 4 years after the effective date of this AD, whichever occurs later, modify the longeron-to-frame attachment area and frame-to-skin shear clips, in accordance with McDonnell Douglas Service Bulletin DC9–53–140, Revision 05, dated February 15, 1996. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Note 2: Airplanes identified in Revision 3 of McDonnell Douglas Service Bulletin DC9–53–140 are required to accomplish the modification specified in paragraph (d) of this AD in accordance with the requirements of AD 96–10–11.

(e) Accomplishment of the inspection requirements of this AD constitutes terminating action for the corresponding inspection requirements of AD 96–10–11 (which are required to be accomplished in accordance with McDonnell Douglas Service Bulletin DC9–53–140, Revision 3, dated March 12, 1986, and McDonnell Douglas DC–9 Service Bulletin 53–150, Revision 2, dated February 27, 1991).

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

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

(g) 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.

(h) The actions shall be accomplished in accordance with McDonnell Douglas Service Bulletin DC9–53–140, Revision 05, dated February 15, 1996; and McDonnell Douglas DC–9 Service Bulletin 53–150, Revision 2, dated February 27, 1991, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25030 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–339–AD; Amendment 39–10776; AD 98–20–09]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that currently requires repetitive functional testing of the main entrance door, cleaning and lubricating of the "speed" lock and "G" lock systems, and repair, if necessary. This amendment adds a requirement for replacement of the "G" lock rollers with new, improved "G" lock rollers. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inability of the main entrance door to open, which could delay or impede passengers from exiting the airplane, or rescue personnel from entering the airplane during an emergency.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of October 27, 1998.

The incorporation by reference of Jetstream Service Bulletin J41–52–058, dated July 14, 1997, was approved previously by the Director of the Federal Register as of September 24, 1997 (62 FR 47362, September 9, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–19–02, amendment 39–10122 (62 FR 47362, September 9, 1997), which is applicable to all British Aerospace (Jetstream) Model 4101 airplanes, was published in the **Federal Register** on July 31, 1998 (63 FR 40856). The action proposed to continue to require repetitive functional testing of the main entrance door, cleaning and lubricating of the "speed" lock and "G" lock systems, and repair, if necessary. The action also proposed to add a requirement for replacement of the "G" lock rollers with new, improved "G" lock rollers.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment 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 57 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 97–19–02 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,420, or $60 per airplane, per functional test cycle.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $10,260, or $180 per airplane.

The cost impact figures discussed above are 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.

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 removing amendment 39–10122 (62 FR 47362, September 9, 1997), and by adding a new airworthiness directive (AD), amendment 39–10776, to read as follows:

98–20–09 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10776. Docket 97–NM–339–AD. Supersedes AD 97–19–02, Amendment 39–10122.

Applicability: All Jetstream Model 4101 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 (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 inability of the main entrance door to open, which could delay or impede passengers from exiting the airplane, or rescue personnel from entering the airplane during an emergency, accomplish the following:

Restatement of Requirements of AD 97–19–02, Amendment 39–10122

(a) Within 30 days after September 24, 1997 (the effective date of AD 97–19–02, amendment 39–10122), perform a functional test to verify proper operation of the main entrance door (including the "G" lock system) and the "speed" lock system of the main entrance door, in accordance with Section 52–10–05 of BAe Jetstream Series 4101 Maintenance Manual (MM).

(1) If the "speed" lock and the "G" lock function satisfactorily: Within 60 days after September 24, 1997, perform the actions specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Clean (remove existing contaminants and lubricant) and re-lubricate (with a dry lubricant) the "speed" lock and main entrance door "G" lock systems in accordance with Jetstream Service Bulletin J41–52–058, dated July 14, 1997. And,

(ii) Following accomplishment of paragraph (a)(1)(i) of this AD, and prior to further flight, repeat the functional test specified in paragraph (a) of this AD.

(A) If the "G" lock and the "speed" lock function satisfactorily in the functional test required by paragraph (a)(1)(ii) of this AD, accomplish the requirements of paragraph (b) of this AD.

(B) If the "G" lock and the "speed" lock do not function satisfactorily in the functional test required by paragraph (a)(1)(ii) of this AD: Prior to further flight, repair the "G" lock and the "speed" lock in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(2) If either the "speed" lock and/or the "G" lock do not function correctly: Prior to further flight, perform the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Clean (remove existing contaminants and lubricant) and re-lubricate (with a dry lubricant) the main entrance door "speed" lock and "G" lock systems in accordance with Jetstream Service Bulletin J41–52–058, dated July 14, 1997. And,

(ii) Following accomplishment of paragraph (a)(2)(i) of this AD, and prior to further flight, repeat the functional test of the main entrance door (including the "G" lock system) and the "speed" lock system, in accordance with the MM.

(A) If the "G" lock and "speed" lock function satisfactorily in the functional test required by paragraph (a)(2) of this AD, accomplish the requirements of paragraph (b) of this AD.

(B) If the "G" lock and "speed" lock do not function satisfactorily in the functional tests required by paragraph (a)(2) of this AD: Prior to further flight, repair the "G" lock and "speed" lock in accordance with a method approved by the Manager, International Branch, ANM–116.

(b) Perform the actions specified in paragraphs (b)(1) and (b)(2) of this AD within 1,500 hours time-in-service following accomplishment of the initial functional test of the main entrance door required by paragraph (a) of this AD. Repeat the actions specified in paragraphs (b)(1) and (b)(2) of this AD, thereafter, at intervals not to exceed 1,500 hours time-in-service.

(1) Clean (remove contaminants and dry lubricant) and re-lubricate (with dry lubricant) the main entrance door "speed" lock and "G" lock systems in accordance with Jetstream Service Bulletin J41–52–058, dated July 14, 1997.

(2) Following accomplishment of paragraph (b)(1) of this AD and prior to further flight, perform a functional test of the main entrance door (including the "G" lock system) and the "speed" lock system, in accordance with the MM. If the "G" lock or "speed" lock system do not perform satisfactorily: Prior to further flight, repair the "G" lock or "speed" lock system in accordance with a method approved by the Manager, International Branch, ANM–116.

New Requirements of This AD:

(c) Within 60 days after the effective date of this AD, replace the "G" lock rollers on the main entrance door with new, improved "G" lock rollers in accordance with Jetstream Alert Service Bulletin J41–A–52–059, dated September 12, 1997, or Revision 2, dated January 23, 1998.

(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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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 airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided by paragraphs (a), (a)(1)(ii)(B), (a)(2)(ii)(B), and (b)(2) of this AD, the actions shall be done in accordance with Jetstream Service Bulletin J41–52–058, dated July 14, 1997; and Jetstream Alert Service Bulletin J41–A–52–059, dated September 12, 1997; or Jetstream Alert Service Bulletin J41–A–52–059, Revision 2, dated January 23, 1998.

(1) The incorporation by reference of Jetstream Alert Service Bulletin 41–A–52–059, dated September 12, 1997; and Jetstream Alert Service Bulletin J41–A–52–059, Revision 2, dated January 23, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Jetstream Service Bulletin J41–52–058, dated July 14, 1997, was approved previously by the Director of the Federal Register as of September 24, 1997 (62 FR 47362, September 9, 1997).

(3) Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 001–09–97.

(g) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25029 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–61–AD; Amendment 39–10777; AD 98–20–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on May 12, 1998 (63 FR 26107). That action proposed to require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay.

Comments Received

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

Three commenters support the proposed rule.

Requests to Reference Latest Airbus Service Bulletin

Two commenters request that paragraph (a) of the proposed AD be revised to reference Revision 02 of Airbus Service Bulletin A320–24–1092, dated March 9, 1998. However, one of these commenters requests that the FAA cite only Revision 02 as the appropriate source of service information for accomplishment of the proposed relocation, rather than citing the original version or Revision 01 of the service bulletin as proposed in the NPRM. This commenter states that the relocation cannot be accomplished in accordance with the original version or Revision 01 of the referenced service bulletin, but provides no additional information regarding errors in these revisions.

The FAA concurs with the commenters' request to reference Revision 02 of Airbus Service Bulletin A320–23–1092, dated March 9, 1998, in the final rule as an additional source of service information for accomplishment of the relocation. However, the FAA does not concur with the one commenter's request to cite only Revision 02 of the subject service bulletin. The FAA points out that Revision 02 of the service bulletin states that no further work is necessary on airplanes modified in accordance with the original version or Revision 01 of the service bulletin. In addition, the FAA has reviewed Revision 02 of the subject service bulletin and finds that the relocation procedures are identical to those described in the original version and Revision 01 of the subject service bulletin. The only relevant

change is to the work hour estimate, which has been increased from 16 work hours to 61 work hours per airplane. Therefore, the FAA has revised paragraph (a) and the cost impact information of the final rule accordingly.

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 changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 120 Model A319, A320, and A321 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 61 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $209 or $961 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be as low as $3,869 per airplane, or as high as $4,621 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.

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:

98–20–10 Airbus Industrie: Amendment 39–10777. Docket 98–NM–61–AD.

Applicability: Model A319, A320, and A321 series airplanes; on which Airbus Modification 26065 (reference Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; or Revision 02, dated March 9, 1998.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) The relocation shall be done in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997; or Airbus Service Bulletin A320–24–1092, Revision 02, dated March 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–360–111(E), dated November 19, 1997.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25028 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–162–AD; Amendment 39–10779; AD 98–20–12]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires replacement of certain landing gear proximity sensor electrical units (PSEU)

with improved units. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the failure of normal extension and retraction of the landing gear, which could result in collapse of the main landing gear upon landing.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Dornier Model 328–100 series airplanes was published in the **Federal Register** on July 31, 1998 (63 FR 40854). That action proposed to require replacement of certain landing gear proximity sensor electrical units (PSEU) with improved units.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 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 replacement, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, 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.

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:

98–20–12 Dornier Luftfahrt GMBH: Amendment 39–10779. Docket 98–NM–162–AD.

Applicability: Model 328–100 series airplanes, equipped with landing gear proximity sensor electrical units (PSEU) having part number (P/N) 8–700–03 or 8–700–04; 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 (c) 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 failure of normal extension and retraction of the landing gear, which could result in collapse of the main landing gear upon landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the landing gear PSEU's having P/N 8–700–03 or 8–700–04 with PSEU's having P/N 8–700–04 Mod A or 8–700–05, in accordance with Dornier Service Bulletin SB–328–32–248, Revision 1, dated April 22, 1998.

Note 2: Dornier Service Bulletin SB–328–32–248, Revision 1, dated April 22, 1998, references Crane ELDEC Corporation Service Bulletin 8–700–31–02, Revision 1, December 11, 1997, as an additional source of service information to accomplish the actions required by this AD.

(b) As of the effective date of this AD, no person shall install a landing gear PSEU having P/N 8–700–03 or 8–700–04 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The replacement shall be done in accordance with Dornier Service Bulletin SB–328–32–248, Revision 1, dated April 22, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–137, dated March 26, 1998.

(f) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25026 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–257–AD; Amendment 39–10786; AD 98–20–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. This amendment continues to require certain repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. This amendment removes certain repetitive inspections for cracking of the bulkhead web to Y-ring lap joint area but retains the initial inspection for cracking in that area. This amendment also adds a one-time inspection from the forward side of the bulkhead to detect fatigue cracking of the upper segment of the bulkhead web, and follow-on corrective actions, if necessary. This amendment is prompted by reports indicating that the inspections required by the existing AD may not detect cracking of the bulkhead web in a timely manner. The actions specified in this AD are intended to detect and correct fatigue cracking of the upper segment of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane.

DATES: Effective October 7, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before November 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–257–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 21, 1987, the FAA issued AD 87–23–10, amendment 39–5758 (52 FR 41551, October 29, 1987), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. That action was prompted by analysis of inspection reports and the results of testing by the manufacturer. The actions required by that AD are intended to detect and correct fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received a report indicating that one operator found a 7.5-inch-long crack in the upper portion of the web of the pressure bulkhead at Body Station 2360 on a Boeing Model 747 series airplane. Analysis of the cracked bulkhead web revealed a series of short cracks initiated at the fastener holes common to the outer chord of the Y-ring in multiple locations. These cracks propagated rapidly due to fatigue, and joined together to form the 7.5-inch-long crack.

That airplane had accumulated 25,777 total landings and 74,266 total flight hours at the time the crack was discovered. The upper portion of the web of the pressure bulkhead of that airplane had been inspected previously in accordance with AD 87–23–10, and the crack was discovered during a repeat detailed visual inspection performed approximately 7,000 landings after the initial inspection. These findings indicate that cracking of the upper portion of the web of the pressure bulkhead could develop on the affected airplanes in fewer landings than the repetitive inspection interval of 7,000 landings that is mandated by the existing AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. That alert service bulletin describes procedures for, among other things, a detailed visual inspection performed from the forward side of the bulkhead to detect cracking of the upper segment of the bulkhead web at the attachment to the outer chord of the Y-ring. That alert service bulletin also describes procedures for follow-on corrective actions, if necessary, which include a surface probe eddy current inspection to detect cracking of the upper and lower segments of the bulkhead around the fasteners that attach the web to the outer chord of the Y-ring. The alert service bulletin also specifies that the manufacturer may be contacted for the disposition of certain repairs.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 87–23–10 to continue to require certain repetitive inspections for damage or cracking of the aft pressure bulkhead, and repair, if necessary. In addition, this AD removes repetitive detailed visual inspections for cracking of the bulkhead web to Y-ring lap joint area but retains the initial inspection for cracking in that area. This AD also adds a one-time detailed visual inspection from the forward side of the bulkhead to detect fatigue cracking of the upper segment of the bulkhead web, and follow-on corrective actions, if necessary. The actions are required to be accomplished

in accordance with the alert service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring additional repetitive detailed visual inspections from the forward side of the bulkhead to detect cracking of the upper segment of the bulkhead web; repetitive surface probe high frequency eddy current inspections from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web; and repair, if necessary. However, the planned compliance time for these actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that the alert service bulletin specifies accomplishment of the visual inspection prior to the accumulation of 20,000 total flight cycles (landings); within 250 flight cycles after receipt of Boeing Alert Service Bulletin 747–53A2275, Revision 6; or within 1,500 flight cycles after the last visual inspection from the forward side of the bulkhead; whichever occurs latest. The FAA has determined that such compliance options may not ensure that all affected airplanes are inspected in a timely manner.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the time necessary to accomplish the inspection (4 hours), and the average utilization of the affected fleet. The FAA finds that, due to possible variances in average utilization among airplanes, a grace period of 90 days rather than 250 flight cycles (landings) will better ensure that the inspection is accomplished on all Boeing Model 747 series airplanes in a timely manner.

In light of all of these factors, the FAA finds that accomplishment of the inspection for all affected airplanes prior to the accumulation of 20,000 total landings, within 1,500 landings after the last visual inspection from the forward side of the bulkhead, or within 90 days after the effective date of this AD, whichever occurs latest, represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Applicability

AD 87–23–10 was applicable to Boeing Model 747 series airplanes, as listed in Boeing Service Bulletin 747–53–2275, Revision 1, dated August 13, 1987. This AD is applicable to Boeing Model 747 series airplanes, line positions 1 through 671. This change is being made to more precisely define the airplanes that are affected. The line positions are the same as those referenced in the effectivity of Boeing Service Bulletin 747–53–2275, Revision 1; no new airplanes are added as a result of this change.

Explanation of Disallowance of Adjustment Factor

Paragraph (g) of AD 87–23–10 specified that, based on continued mixed operation at lower cabin differential pressures, the compliance thresholds and intervals specified in that AD for Boeing Model 747 series airplanes could be multiplied by a 1.2 adjustment factor. Since the issuance of that AD, the FAA has determined that insufficient data exist to support such an adjustment to flight cycles. In fact, data are available that indicate that the use of a 1.2 adjustment factor provides inaccurate data and unjustified relief for inspection intervals. Consequently, this AD does not allow for such an adjustment factor, and the provisions of paragraph (g) of the existing AD have not been included in this AD.

Explanation of Disallowance of Modification

Paragraph (j) of AD 87–23–10 specifies that modification of Boeing Model 747 series airplanes by installing certain new, improved parts would constitute terminating action for the inspection requirements of that AD. Since the issuance of AD 87–23–10, the FAA has determined that the kit necessary for accomplishment of such modification was never made available by the manufacturer. Therefore, because it is not possible to comply with the actions described by paragraph (j), the provisions of that paragraph have not been included in this AD.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–257–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft,

and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–5758 (52 FR 41551, October 29, 1987), and by adding a new airworthiness directive (AD), amendment 39–10786, to read as follows:

98–20–20 Boeing: Amendment 39–10786. Docket 98–NM–257–AD. Supersedes AD 87–23–10, amendment 39–5758.

Applicability: Model 747 series airplanes, line positions 1 through 671 inclusive; 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 (i)(1) 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 detect and correct fatigue cracking of the upper segment of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 750 landings after December 10, 1987 (the effective date for AD 87–23–10, amendment 39–5758), unless accomplished within the last 1,250 landings [for airplanes subject to a 2,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], or unless accomplished within the last 250 landings [for airplanes subject to a 1,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], perform a detailed visual inspection; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; of the aft side of the entire Body Station (BS) 2360 aft pressure bulkhead for damage such as dents, tears, nicks, gouges, or scratches; and cracks at splices and doublers, and around the Auxiliary Power Unit pressure pan cutout; and, for Group 4 airplanes only, inspect from the forward side, the area adjacent to the window cutout for damage or cracks.

Note 2: Notwithstanding provisions to the contrary in AD 87–23–10, and in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, and Revision 5, dated January 16, 1997: For Model 747SR airplanes operating at a cabin pressure differential lower than 8.6 pounds-per-square-inch (psi), an adjustment factor of 1.2 shall *not* be used after the effective date of this AD as a multiplier for inspection thresholds and intervals specified in this AD.

(b) After initial compliance with paragraph (a) of this AD, continue to inspect as follows:

(1) For Group 1 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 2,000 landings.

(2) For Groups 2 and 3 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 1,000 landings; or optionally, at the applicable time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) For Group 2 airplanes that operate the entire interval with aft lavatory complexes or galleys adjacent to bulkheads, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings.

(ii) For Groups 2 and 3 airplanes that operate the entire interval with an intact protective shield on the lower half of the forward side of the bulkhead, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings; and perform a detailed visual inspection of the protective shield for damage in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at intervals not to exceed 1,000 landings. If damage is found to the protective shield that exceeds the limits indicated in the service bulletin, prior to further flight, repeat the inspection required by paragraph (a) of this AD.

(3) For Group 4 airplanes, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

(c) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 3,250 landings; and at intervals thereafter not to exceed 4,000 landings; perform eddy current, ultrasonic, and X-ray inspections of the aft side of the BS 2360 aft pressure bulkhead for cracks; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(d) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 6,250 landings; and thereafter at intervals not to exceed 7,000 landings until the inspection required by paragraph (g) of this AD is accomplished: Perform a detailed visual inspection to detect cracking of the BS 2360 aft pressure bulkhead web to Y-ring lap joint area between radial stiffeners from the forward side of the bulkhead, in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(e) If any cracking or damage is found during any inspection required by paragraph (a), (b), (c), or (d) of this AD, repair prior to further flight in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March.31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

(f) For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

(g) Perform a one-time detailed visual inspection from the forward side of the bulkhead of the upper segment of the bulkhead web at BS 2360 to detect cracking, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD. If no cracking is detected during this inspection, no further action is required by this paragraph. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (d) of this AD.

(1) Within 7,000 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Prior to the accumulation of 20,000 total landings.

(ii) Within 1,500 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(iii) Within 90 days after the effective date of this AD.

(h) If any cracking is detected during the inspection required by paragraph (g) of this AD, prior to further flight, accomplish a surface probe eddy current inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web around the fasteners that attach the web to the outer chord of the Y-ring, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. Repair any cracking, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(i)(2) Alternative methods of compliance for repairs and modifications, approved previously in accordance with AD 87–23–10, amendment 39–5758, are approved as alternative methods of compliance with this AD.

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

(j) Special flight permits may be issued in accordance with 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.

(k) Except as provided by paragraph (h) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. These Boeing service bulletins contain the following list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
747–53–2275, March 26, 1987	1–50	Original	March 26, 1987.
747–53–2275, Revision 1, August 13, 1987	1–8, 10–17, 26–51	1	August 13, 1987.
	9, 18–25	Original	March 26, 1987.
747–53–2275, Revision 2, March 31, 1998	1–8, 10–13, 18, 22, 29, 35, 42, 49–53	2	March 31, 1988.
	14–17, 26–28, 30–34, 36–41, 43–38	1	August 13, 1987.
	9, 19–21, 23–25	Original	March 26, 1987.
747–53–2275, Revision 3, March 29, 1990	1–33, 35, 54–57	3	March 29, 1990.
	42, 49–53	2	March 31, 1988.
	34, 36–41, 43–48	1	August 13, 1987.
747–53–2275, Revision 4, March 26, 1992	1–60	4	March 26, 1992.
747–53–2275, Revision 5, January 16, 1997	1–66	5	January 16, 1997.
747–53A2275, Revision 6, August 27, 1997	1–76	6	August 27, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on October 7, 1998.

Issued in Renton, Washington, on September 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25123 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–206–AD; Amendment 39–10783; AD 98–20–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of the struts for the stowage box located forward of galley 2. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the struts, which could result in displacement of the stowage box, and possible injury to passengers and flight crew.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Airbus Model A300 series airplanes was published in the **Federal Register** on July 31, 1998 (63 FR 40849). That action proposed to require modification of the struts for the stowage box located forward of galley 2.

Comments

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

The commenter does not object to the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $226 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,304, or $346 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.

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:

98–20–16 Airbus Industrie: Amendment 39–10783. Docket 98–NM–206–AD.

Applicability: Model A300 series airplanes on which a stowage box located forward of galley 2 is installed; and on which Airbus Industrie Modification 5105 (Airbus Service Bulletin A300–25–395, dated March 22, 1984) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (c) 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 failure of the struts for the stowage box located forward of galley 2, which could result in displacement of the stowage box, and possible injury to passengers and flight crew, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the struts for the stowage box located forward of galley 2, in accordance with Airbus Service Bulletin A300–25–395, dated March 22, 1984, as revised by Change Notices OB, dated June 2, 1985, and OC, dated June 20, 1988.

(b) As of the effective date of this AD, no person shall install on any airplane a strut, part number (P/N) A2527979620000, on the stowage box located forward of galley 2.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The modification shall be done in accordance with Airbus Service Bulletin A300–25–395, dated March 22, 1984, as revised by Change Notice OB, dated June 2, 1985, and Change Notice OC, dated June 20, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–359–233(B), dated November 19, 1997.

(f) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25122 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–176–AD; Amendment 39–10782; AD 98–20–15]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 340B series airplanes, that requires a one-time inspection for moisture or other contamination of a certain wiring harness, electrical relay, and relay socket; a one-time inspection for electrical damage of the same electrical relay and socket; corrective actions, if necessary; and replacement of certain nut plates with new, improved parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a short circuit caused by fluid leakage, which could result in inability to retract the landing gear or require the use of emergency extension.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Saab Model SAAB 340B series airplanes was published in the **Federal Register** on July 16, 1998 (63 FR 38353). That action proposed to require a one-time inspection for moisture or other contamination of a certain wiring harness, electrical relay, and relay socket; a one-time inspection for electrical damage of the same electrical relay and socket; corrective actions, if necessary; and replacement of certain nut plates with new, improved parts.

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

Request To Revise Descriptive Language

One commenter notes that the description of the incident that appeared in the Discussion section of the preamble to the notice of proposed rulemaking (NPRM) refers to "* * * the flightcrew being unable to extend and lock down the landing gear." The commenter notes that it was the normal extension operation that failed, and that the crew used emergency extension and made a normal landing. The commenter suggests that a more accurate description would be "the flightcrew having to use emergency extension of the landing gear." The FAA acknowledges that the commenter's wording is more accurate. Since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

The same commenter also suggests that the description of the unsafe condition that appeared in the NPRM be revised to read "* * * which could result in inability to retract the landing gear or require the use of emergency extension. * * *" The FAA concurs with this suggestion and has revised the pertinent wording throughout the final rule.

Request To Reference Latest Saab Service Bulletin

In addition, the commenter requests that paragraph (a) of the proposed AD be revised to reference Revision 01 of Saab Service Bulletin 340–32–115, dated August 12, 1998. The commenter notes that the reason for this revision was to clarify identification of wire numbers. The FAA concurs. Since issuance of the NPRM, Saab has issued Revision 01 of the subject service bulletin. The inspections, replacement, and corrective actions described in Revision 01 of the service bulletin are essentially identical to those described in the original version of the service bulletin (which was referenced in the NPRM as the appropriate source of service information). As noted by the commenter, the only relevant change is to clarify wire numbers. Therefore, the FAA has revised paragraph (a) of the final rule to reference Revision 01 of the subject service bulletin as an additional source of service information.

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 changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 120 Model SAAB 340B series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $7,200, or $60 per airplane.

It would take approximately 3 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $21,600, or $180 per airplane.

The cost impact figures discussed above are 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.

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:

98–20–15 Saab Aircraft AB: Amendment 39–10782. Docket 98–NM–176–AD.

Applicability: Model SAAB 340B series airplanes, manufacturer serial numbers 380 through 499 inclusive; 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 prevent a short circuit caused by fluid leakage, which could result in inability to retract the landing gear or require the use of emergency extension, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Saab Service Bulletin 340–32–115, dated April 7, 1998, or Revision 01, dated August 12, 1998. As of the effective date of this AD, Revision 01 of the service bulletin shall be used.

(1) Perform a detailed visual inspection to detect moisture or other contamination of the electrical wiring harness above relay consoles 305VU and 306VU. If any moisture or other contamination is found, prior to further flight, clean the wiring harness.

(2) Perform a detailed visual inspection to detect moisture or other contamination of electrical relay 15GA and its socket. If any moisture or other contamination is found, prior to further flight, accomplish corrective actions.

(3) Perform a detailed visual inspection for electrical damage of electrical relay 15GA and its socket. If any sign of electrical damage (arcing, discoloration, or charring) is detected, prior to further flight, replace the existing relay and socket with new parts.

(4) Replace the existing nut plates on the floor of the cockpit with new, improved nut plates, on the left and right sides of the airplane.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) The actions shall be done in accordance with Saab Service Bulletin 340–32–115, dated April 7, 1998, or Saab Service Bulletin 340–32–115, Revision 01, dated August 12, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–125, dated April 7, 1998.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25121 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–172–AD; Amendment 39–10781; AD 98–20–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Senior Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York

11581; telephone (516) 256–7506; 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 certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes was published in the **Federal Register** on July 31, 1998 (63 FR 40852). That action proposed to require a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to This Final Rule

The FAA has revised the final rule to reflect a change of the manufacturer's name from de Havilland to Bombardier.

Conclusion

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 this AD.

Cost Impact

The FAA estimates that 225 airplanes of U.S. registry will be affected by this AD.

For the 210 Model DHC–8–102, –103, –106, –201, and –202 series airplanes affected, it will take approximately 70 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD for these airplanes on U.S. operators is estimated to be $882,000, or $4,200 per airplane.

For the 15 Model DHC–8–301, –311, and –315 series airplanes affected, it will take approximately 100 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD for these airplanes on U.S. operators is estimated to be $90,000, or $6,000 per airplane.

The cost impact figures discussed above are 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.

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:

98–20–14 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10781. Docket 98–NM–172–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 3 through 519 inclusive, excluding serial number 462; 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 prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight, accomplish the following:

(a) Within 36 months after the effective date of this AD, perform a one-time visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor; install additional tie-mounts and tie-wraps; and apply sealant to rivet heads (reference Bombardier Modification 8/2705); in accordance with Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998. If any chafing is detected during the inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin.

(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. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: 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) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–08, dated March 26, 1998.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25119 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–246–AD; Amendment 39–10750; AD 98–19–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A321 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. This amendment also provides for optional terminating action for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the use of erroneous automatic roll-out guidance generated by the flight management and guidance computer, which could result in the airplane departing the runway upon landing.

DATES: Effective October 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A321 series airplanes. The DGAC advises that the flight management and guidance computer (FMGC) can generate erroneous roll-out guidance due to software calculation errors. The software calculation errors may affect the roll-out guidance generated by the FMGC when an automatic landing is performed on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. Use of erroneous automatic roll-out guidance, if not corrected, could result in the airplane departing the runway upon landing.

Explanation of Relevant Service Information

Airbus has issued A319/320/321 Airplane Flight Manual (AFM) Temporary Revision (TR) 9.99.99/44, Issue 2, dated March 3, 1998, which prohibits automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive.

Airbus also has issued Service Bulletins A320–22–1054, Revision 01, dated December 3, 1997 (for airplanes equipped with CFM engines); and A320–22–1062, dated October 6, 1997 (for airplanes equipped with IAE engines); which describe procedures for modifying the flight management and guidance computer software. Accomplishment of the software modifications eliminates the need for the AFM revision. Accomplishment of the actions specified in the AFM revision or service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified Airbus A319/320/321 AFM TR 9.99.99/44, Issue 2, dated March 3, 1998, as mandatory and issued French airworthiness directive 98–226–119(B), dated June 17, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the use of erroneous automatic roll-out guidance generated by the flight management and guidance computer, which could result in the airplane departing the runway upon landing. This AD requires revising the Limitations Section of the FAA-approved AFM to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. This AD also provides for optional terminating action for the AFM revision.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the

FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–246–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

98–19–08 Airbus Industrie: Amendment 39–10750. Docket 98–NM–246–AD.

Applicability: Model A321 series airplanes, certificated in any category, as identified below:

• Model A321 series airplanes equipped with CFM engines, on which Airbus Modification 25199 (reference Airbus Service Bulletin A320–22–1045) has been installed, except for those on which Airbus Modification 25469 (reference Airbus Service Bulletin A320–22–1054, dated May 28, 1996, or Revision 1, dated December 3, 1997) has been installed.

or

• Model A321 series airplanes equipped with IAE engines, on which Airbus Modification 25200 (reference Airbus Service Bulletin A320–22–1046) has been installed, except for those on which Airbus Modification 26243 (reference Airbus Service Bulletin A320–22–1062, dated October 6, 1997) has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (c) 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 use of erroneous automatic roll-out guidance generated by the flight management and guidance computer, which could result in the airplane departing the runway upon landing, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. This may be accomplished by inserting a copy of Airbus A319/320/321 Airplane Flight Manual Temporary Revision 9.99.99/44, Issue 2, dated March 3, 1998, into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in the applicable temporary revision cited in paragraph (a) of this AD.

(b) Accomplishment of the software modification specified in Airbus Service Bulletin A320–22–1054, Revision 1, dated December 3, 1997 (for airplanes equipped with CFM engines), or Airbus Service Bulletin A320–22–1062, dated October 6, 1997 (for airplanes equipped with IAE engines), as applicable, constitutes terminating action for the AFM revision required by paragraph (a) of this AD. After the software modification has been accomplished, the AFM limitation required by paragraph (a) of this AD may be removed from the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The AFM revision shall be done in accordance with Airbus A319/320/321 Airplane Flight Manual Temporary Revision 9.99.99/44, Issue 2, dated March 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–226–119(B), dated June 17, 1998.

(f) This amendment becomes effective on October 7, 1998.

Issued in Renton, Washington, on September 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25151 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–96–AD; Amendment 39–10790; AD 98–20–24]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection of direct current (DC) power unit 1VE to determine whether electrical connections are correctly installed and stud nuts are correctly torqued, and corrective actions, if necessary. For certain airplanes, this amendment also requires replacement of the existing DC power unit 1VE with a modified DC power unit. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent overheating of electrical connections, which could result in electrical arcing and consequent fire.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Dornier Model 328–100 series airplanes was published in the **Federal Register** on July 7, 1998 (63 FR 36624). That action proposed to require a one-time inspection of the direct current (DC) power unit 1VE to determine whether electrical connections are correctly installed and stud nuts are correctly torqued, and corrective actions, if necessary. For certain airplanes, that action also proposed to require replacement of the existing DC power unit 1VE with a modified DC power unit.

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

The commenter, the manufacturer, requests that the FAA withdraw the proposed rule. The commenter submits data reflecting the compliance status of all affected airplanes, which indicate that all U.S.-registered airplanes are in compliance with the proposed requirements of the AD.

The FAA does not concur with the commenter's request to withdraw the proposed AD. The data submitted by the commenter indicate that some airplanes of foreign registry do not comply with the requirements of the AD. If any airplane of foreign registry were to be placed on the U.S. Register in the future, that airplane would be required to be in compliance with the inspections and modifications specified in this AD. Issuance of this AD is the appropriate vehicle to ensure that the required inspection and modification are accomplished on such an airplane prior to entry into the U.S.

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

The FAA estimates that 50 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $3,000, or $60 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $12,000, or $240 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.

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:

98–20–24 Dornier Luftfahrt GMBH: Amendment 39–10790. Docket 98–NM–96–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997; or Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997; 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 (c) 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 overheating of electrical connections, which could result in electrical arcing and consequent fire, accomplish the following:

(a) For airplanes listed in Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997: Within 10 days after the effective date of this AD, perform the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997.

(1) Perform a one-time visual inspection of direct current (DC) power unit 1VE to determine whether electrical connections are installed correctly, in accordance with the Accomplishment Instructions of the alert service bulletin. If any discrepancy is detected, prior to further flight, install the connections in accordance with Figure 1 of the alert service bulletin.

(2) Perform a one-time torque inspection of the stud nuts of DC power unit 1VE to determine whether they are torqued correctly, in accordance with the Accomplishment Instructions of the alert service bulletin. If any discrepancy is found, prior to further flight, torque in accordance with Table 1 of the alert service bulletin.

(b) For airplanes listed in Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997: Within 10 days after the effective date of this AD, replace the existing DC power unit 1VE with a modified DC power unit, in accordance with Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997.

Note 2: Dornier Alert Service Bulletin 328–24–021, dated November 25, 1997, refers to l'Equipement et la Construction Electrique Alert Service Bulletin ASB 230GC02Y–24–001, dated November 24, 1997, as an additional source of service information for accomplishing the modification of the DC power unit.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997, or Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–322, dated November 20, 1997; and German airworthiness directive 97–354, dated December 18, 1997.

(f) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25150 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–20–AD; Amendment 39–10792; AD 98–20–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that requires repetitive inspections to detect missing or cracked bolts and fittings of the frame-to-pressure-floor connection; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections of the affected fittings. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking in the bolts and fittings of the frame-to-pressure-floor connection, which could result in reduced structural integrity of the airplane.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Airbus Model A320–111, –211, and –231 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18153). That action proposed to require repetitive inspections to detect missing or cracked bolts and fittings of the frame-to-pressure-floor connection; and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections of the affected fittings.

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

One commenter supports the proposed rule.

Request To Allow Flight With Known Cracks

One commenter requests that the FAA allow flight of the airplane with known cracks. The commenter states that the structure of Airbus Model A320 series airplanes is classified as damage tolerant. The commenter also states that it has defined a certain number of flights that allows continued operation with a cracked or broken part, depending on the measured crack length and number of cracked bolts detected.

The FAA does not concur with the commenter's request to allow flight of an airplane with known cracks. It is the FAA's policy to require repair of known cracks prior to further flight, except in certain cases of unusual need (discussed below). This policy is based on the fact that such damaged airplanes do not conform to the FAA certificated type design, and therefore, are not airworthy until a properly approved repair is incorporated. While recognizing that repair deferrals may be necessary at times, the FAA's policy is intended to minimize adverse human factors relating to the lack of reliability of long-term repetitive inspections, which may reduce the safety of the type certificated design if such repair deferrals are practiced routinely.

Additionally, the FAA's policy applies to airplanes certificated to damage tolerance evaluation regulations as well as those not so certificated. The FAA finds that the commenter's statement that "the Airbus Model A320 airplane structure is classified as damage tolerant" is not relevant to the application of the FAA's policy in this regard.

The FAA's policy regarding flight with known cracks does allow deferral of repairs in certain cases, if there is an unusual need for a temporary deferral. Unusual needs include, among other things, such circumstances as legitimate difficulty in acquiring parts to accomplish repairs. Under such conditions, the FAA may allow temporary deferral of the repair, subject to a stringent inspection program acceptable to the FAA. However, since the FAA is not aware of any unusual need for repair deferral in regard to this AD, the FAA finds that the compliance times specified in the final rule are adequate to allow operators to acquire parts to have on hand in the event that a crack is detected during an inspection. Therefore, the FAA has determined that, due to safety implications and consequences associated with such cracking, any subject bolt or fitting that is found to be cracked or broken must be repaired or modified prior to further flight. No change to the final rule is necessary.

Request To Reference Earlier Airbus Service Bulletins as Terminating Action

One commenter requests that the proposed AD be revised to reference Airbus Service Bulletin A320–53–1015, dated December 12, 1995, and Revision 1, dated July 25, 1995, as additional sources of service information for accomplishment of the optional terminating action. The FAA concurs. The FAA finds that the procedures specified in the earlier revisions of the subject service bulletin are essentially identical to those specified in Revision 02 of the service bulletin (which was referenced in the NPRM as the appropriate source of service information for accomplishment of the optional terminating action). Therefore, the FAA has revised the final rule to include a new NOTE to specify that reinforcement of the fitting prior to the effective date of this AD, in accordance with the earlier revisions of the subject service bulletin, is considered acceptable for compliance with the reinforcement specified in paragraphs (a)(2) and (b) of this 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 changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 5 Model A320–111, –211, and –231 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,700, or $540 per airplane, per inspection cycle.

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.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 119 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $12,920 per airplane. Based on these figures, the cost impact of the optional terminating action would be $20,060 per airplane.

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:

98–20–26 Airbus Industrie: Amendment 39–10792. Docket 98–NM–20–AD.

Applicability: Model A320–111, –211, and –231 series airplanes; as listed in Airbus Service Bulletin A320–53–1083, Revision 2, dated August 28, 1997; 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 (c) 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 detect and correct fatigue cracking in the bolts and fittings of the frame-to-pressure-floor connection, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracked or missing bolts and fittings of the frame-to-pressure-floor connection at frames 43 and 44, in accordance with Airbus Service Bulletin A320–53–1083, Revision 2, dated August 28, 1997. If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 5,100 flight cycles.

(1) If any bolt is found to be cracked or missing during any inspection required by paragraph (a) of this AD, prior to further flight, replace the bolt with a new bolt in accordance with the service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed 5,100 flight cycles.

(2) If any fitting is found to be cracked during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (b) of this AD for the cracked fitting and its corresponding bolts and fuselage frame, in accordance with Airbus Service Bulletin A320–53–1015, Revision 02, dated July 17, 1997.

(b) Reinforcement of the fitting in accordance with Airbus Service Bulletin A320–53–1015, Revision 02, dated July 17, 1997, constitutes terminating action for the requirements of this AD for the affected fitting.

Note 2: Reinforcement of the fitting accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–53–1015, dated December 12, 1995, or Revision 1, dated July 25, 1995, is considered acceptable for compliance with the reinforcement specified in paragraphs (a)(2) and (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The inspections shall be done in accordance with Airbus Service Bulletin A320–53–1083, Revision 2, dated August 28, 1997. The reinforcement, if accomplished, shall be done in accordance with Airbus Service Bulletin A320–53–1015, Revision 02, dated July 17, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–316–110(B), dated October 22, 1997.

(f) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25149 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–256–AD; Amendment 39–10791; AD 98–20–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100 series airplanes. This action requires repetitive inspections to detect cracking of the outer chord of the Body Station (BS) 1480 upper and lower bulkhead and longeron splice fitting, and repair, if necessary. Alternatively, this action requires other repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. This amendment is prompted by a report indicating that fatigue cracking was found in the outer chord of the BS 1480 bulkhead at the overwing longeron splice, and that the longeron splice fitting was completely severed. The actions specified in this AD are intended to detect and correct fatigue cracking of the BS 1480 bulkhead outer chord and longeron splice fitting, which could result in reduced structural integrity of the fuselage and the inability to carry limit load.

DATES: Effective October 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before November 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that a six-inch fatigue crack was found in the outer chord of the Body Station (BS) 1480 bulkhead at the overwing longeron splice on a Boeing Model 747–100 series airplane. The report also indicated that the longeron splice fitting was completely severed. The effects of such fatigue cracking could severely reduce the capability of the overwing longeron to carry lateral load. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the fuselage and the inability to carry limit load.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, which describes procedures for repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; and repair, if necessary. The alert service bulletin also describes, as part of a certain inspection plan, procedures for modification of the skin splice plate, outer chord splice fitting, and the stringer interface of the lower bulkhead. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking of the BS 1480 bulkhead outer chord and longeron splice fitting, which could result in reduced structural integrity of the fuselage and the inability to carry limit load. This AD requires either repetitive detailed visual inspections to detect cracking of the outer chord of the BS 1480 upper and lower bulkhead and longeron splice fitting, and repair, if necessary; or accomplishment of certain actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that the alert service bulletin applies to all Boeing Model 747–100, –200, and –300 series airplanes. This AD only applies to Model 747–100 series airplanes, line positions 1 through 87 inclusive, which have a different configuration of the longeron splice fitting than later Model 747 series airplanes. The severe fatigue damage that prompted the FAA to mandate the actions required by this AD has only been observed on the longeron splice fitting and outer chord of the BS 1480 bulkhead of Model 747–100 series airplanes having line positions 1 through 87 inclusive. As discussed below, the FAA is currently considering requiring repetitive inspections and modification of the upper and lower bulkhead and overwing longeron at BS 1480 for all Boeing Model 747–100, –200, and –300 series airplanes.

In addition, although the alert service bulletin recommends accomplishing the inspection prior to the accumulation of 10,000 total flight cycles or within 1,000 flight cycles after the release of the alert service bulletin, whichever occurs later, the FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a compliance time of 10,000 total flight cycles or 45 days after the effective date of this AD, whichever occurs later, for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action. The FAA is currently considering further rulemaking action to supersede this AD to require inspections and modification of the upper and lower bulkhead and overwing longeron at BS 1480 for all Boeing Model 747–100, –200, and –300 series airplanes. However, the planned compliance time for the initial inspection and installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–256–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

98–20–25 Boeing: Amendment 39–10791. Docket 98–NM–256–AD.

Applicability: Model 747–100 series airplanes, line positions 1 through 87 inclusive; 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 (c) 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 detect and correct fatigue cracking of the Body Station (BS) 1480 bulkhead outer chord and longeron splice fitting, which could result in reduced structural integrity of the fuselage and the inability to carry limit load, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight cycles, or within 45 days after the effective date of this AD, whichever occurs later, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a detailed visual inspection to detect cracking of the longeron splice fitting at BS 1480, the forward side of the outer chord of the BS 1480 bulkhead at the longeron splice fitting attachment bolts, and the aft side of the outer chord of the BS 1480 bulkhead within two inches above the outer chord splice fitting, on both the left and right sides of the airplane.

Note 2: Figure 5 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, provides an exploded view of the structural components of the splice area for the purpose of parts identification. [However, paragraph (a)(1) of this AD does not require the inspection described in Figure 5.]

(i) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(ii) Repeat the detailed visual inspection thereafter at intervals not to exceed 250 flight cycles, until the initial inspection required by paragraph (a)(2) of this AD is accomplished.

(2) Perform detailed visual and eddy current inspections to detect cracking of the upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface, in accordance with Figures 5 and 8 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997. Additionally, for airplanes on which the inspection in "Plan B" of the service bulletin is accomplished, modify the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, in accordance with the Accomplishment Instructions of the alert service bulletin. Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(i) If any cracking is detected, prior to further flight, repair in accordance with the alert service bulletin, except as provided by paragraph (b) of this AD.

(ii) Repeat the inspections thereafter in accordance with the flight safety inspection program specified in Figures 1 and 3 of the alert service bulletin.

(b) Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(d) 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.

(e) Except as provided by paragraphs (a)(1)(i) and (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 7, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25148 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–307–AD; Amendment 39–10788; AD 98–20–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires repetitive visual inspections to detect cracked or broken door stop fittings on the fuselage frame of the forward passenger doors, and replacement of any cracked or broken fitting with a new fitting. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracked or broken door stop fittings of the forward passenger doors, which could result in failure of the door stop fittings, consequent reduced structural integrity of the door support structure, and sudden loss of cabin pressure in the passenger compartment.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on July 7, 1998 (63 FR 36622). That action proposed to require repetitive visual inspections to detect cracked or broken door stop fittings on the fuselage frame of the forward passenger doors, and replacement of any cracked or broken fitting with a new fitting.

Comments Received

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

Request To Delete Proposed Immediate Replacement Requirement

One commenter requests that the FAA delete the requirement for immediate replacement of cracked or broken fittings [as required by paragraph (b) of the proposed AD]. The commenter states that the Master Minimum Equipment List (MMEL) compliance times referenced in Airbus Service Bulletin A300–53–6060 would be sufficient, since Airbus reports of single findings are rare. The commenter also states that it is not reasonable for the FAA to assume that a large number of fittings are on the verge of failure. The commenter states that allowing aircraft to operate under MMEL compliance times will enable it to schedule repairs in a manner which minimizes operational impact.

The FAA does not concur with the commenter's request to delete the requirement for immediate replacement of any cracked or broken door stop fittings. It is the FAA's policy to require repair of known cracks prior to further flight (except in certain cases of unusual need). This policy is based on the fact that such damaged airplanes do not conform to the FAA certificated type design, and therefore, are not airworthy until a properly approved repair is incorporated. Further, the FAA considers that deferral of the compliance time for accomplishment of repairs, as specified in the MMEL, is not appropriate in this case, since to accomplish the inspection the airplane would already be at a location where such repairs can be made. Therefore, such repairs would be expected to have a minimal impact on operation of the airplane. No change to the final rule is necessary.

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

The FAA estimates that 103 Model A300, A310, and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, 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 $12,360, or $120 per airplane, per inspection cycle.

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.

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:

98–20–22 Airbus Industrie: Amendment 39–10788. Docket 97–NM–307–AD.

Applicability: All Model A300, A310, and A300–600 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 (c) 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 detect and correct cracked or broken door stop fittings of the forward passenger doors, which could result in failure of the door stop fittings, consequent reduced structural integrity of the door support structure, and sudden loss of cabin pressure in the passenger compartment, accomplish the following:

(a) Prior to the accumulation of the total flight cycles specified in the "Threshold" column of paragraph 1.B.(5) of the Planning Information of Airbus Service Bulletin A300–53–0309 (for Model A300 series airplanes); A310–53–2087 (for Model A310 series airplanes); or A300–53–6060 (for Model A300–600 series airplanes); all dated March 19, 1997; as applicable; or within 200 flight cycles after the effective date of this AD, whichever occurs later; accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a visual inspection of the left and right forward passenger door stop fittings to detect cracked or broken door stop fittings, in accordance with the applicable service bulletin.

(2) Thereafter, repeat the visual inspection at the intervals specified in the "Intervals" column of paragraph 1.B.(5) of the Planning Information of the applicable service bulletin.

(b) If any cracked or broken door stop fitting is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, replace the door stop fitting with a new fitting in accordance with Airbus Service Bulletin A300–53–0309 (for Model A300 series airplanes); A310–53–2087 (for Model A310 series airplanes); or A300–53–6060 (for Model A300–600 series airplanes); all dated March 19, 1997; as applicable. Thereafter, repeat the visual inspections at the intervals specified in the "Intervals" column of paragraph 1.B.(5) of the Planning Information of the applicable service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–53–0309, dated March 19, 1997; Airbus Service Bulletin A310–53–2087, dated March 19, 1997; or Airbus Service Bulletin A300–53–6060, dated March 19, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–124–223(B), dated June 4, 1997.

(f) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25147 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–14–AD; Amendment 39–10789; AD 98–20–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires a one-time inspection to detect discrepancies in the electrical wiring and wiring harness behind the lavatory, and corrective actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing of electrical wiring, which could result in severe overheating of the wiring, consequent smoke in the flight deck and cabin, and possible injury to flightcrew or passengers.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; 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 certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16174). That action proposed to require a one-time inspection to detect discrepancies in the electrical wiring and wiring harness behind the lavatory, and corrective actions.

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

The commenter requests that the compliance time for the one-time inspection and modification be changed from the proposed 9 months to 5 years. The commenter states that each of its airplanes would have to use weekend maintenance slots for the modification because of the lengthy down time required to accomplish the proposed actions. This would mean the commenter could accomplish two airplanes per week; and at that rate, it would take 6 months of weekends to accomplish the entire fleet. Further, the commenter notes that the proposed 9-month compliance time would result in other needed maintenance/modifications being neglected during that period. The commenter's request to extend the compliance time to 5 years is based on the merits of its history with the airplane model, and the fact that the Bombardier service bulletin recommends accomplishment of the service bulletin "at the operator's earliest opportunity."

The FAA does not concur with the commenter's request to extend the compliance time to 5 years since the commenter provided no technical justification for extending the compliance time. Furthermore, in developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the normal maintenance schedules for timely accomplishment of the inspection and modification. The FAA also considered the fact that the referenced Bombardier service bulletin (containing the procedures for accomplishing the required actions) has been available to all operators of the Model DHC–8–100, –200, and –300 series airplanes since April 1997; therefore, U.S. operators have had ample time since then to consider initiating those actions, which this AD ultimately mandates. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Change to the Rule

The FAA has revised this final rule to specify the manufacturer's name change from de Havilland to Bombardier.

Conclusion

After careful review of the available data, including the comment noted 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

The FAA estimates that 163 airplanes of U.S. registry will be affected by this proposed AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $9,780, or $60 per airplane.

It will take approximately 20 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $195,600 or $1,200 per airplane.

The cost impact figures discussed above are 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.

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:

98–20–23 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10789. Docket 98–NM–14–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, serial numbers 003 through 433 inclusive, except 031, 408, and 413; 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 prevent chafing of electrical wiring, which could result in severe overheating of the wiring, consequent smoke in the flight deck and cabin, and possible injury to flightcrew or passengers, accomplish the following:

(a) Within 9 months after the effective date of this AD, perform a one-time inspection to detect discrepancies in the electrical wiring or wiring harness located behind the lavatory, in accordance with Bombardier Service Bulletin S.B. 8–24–50, dated April 25, 1997.

(1) If no discrepancy is found, prior to further flight, modify the wiring harness and the lavatory forward panel, in accordance with the service bulletin.

(2) If any discrepancy is found, prior to further flight, repair it and modify the wiring harness and the lavatory forward panel, in accordance with the service bulletin.

(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. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: 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) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 8–24–50, dated April 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–14, dated July 22, 1997.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25146 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–270–AD; Amendment 39–10787; AD 98–20–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes Equipped With Heath Tecna Aerospace Extended Spacial Concept Interior III Installed in Accordance With Supplemental Type Certificate SA4744NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–80 series airplanes, that requires an inspection to detect discrepancies of electrical plugs and receptacles of the sidewall lighting system in the passenger cabin, and to verify that the ends of all pins and sockets are even and that they are seated and locked into place. This amendment also requires replacement of any discrepant part with a new part, and modification of the electrical wiring and connectors of the sidewall lighting system in the passenger cabin. This amendment is prompted by reports of failures of the electrical connectors in the sidewall fluorescent lighting, which resulted in smoke or lighting interruption in the passenger cabin. The actions specified by this AD are intended to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and consequently, connector burnthrough and smoke in the passenger cabin.

DATES: Effective October 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Hexcel Interiors (formerly Heath Tecna Aerospace), 3225 Woburn Street, Bellingham, Washington 98226. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2793; fax (206) 227–1181.

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 McDonnell Douglas DC–9–80 series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19946). That action proposed to require an inspection to detect discrepancies of electrical plugs and receptacles of the sidewall lighting system in the passenger cabin, and to verify that the ends of all pins and sockets are even and that they are seated and locked into place. That action also proposed to require replacement of any discrepant part with a new part, and modification of the electrical wiring and connectors of the sidewall lighting system in the passenger cabin.

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

One commenter supports the proposal.

One commenter states that it does not own any of the affected airplanes and, therefore, is unaffected by the proposed rule.

Requests To Withdraw the Proposal

The Air Transport Association (ATA) of America states that a member airline will have accomplished the modification within the compliance times specified in AD 95–08–04, amendment 39–9193 (60 FR 19348, dated April 18, 1995), and that the proposal is duplicative in nature. (AD 95–08–04 is applicable to Model DC–9–80 series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas MD–80 Service Bulletin 33–99, dated May 24, 1994.) The commenter states that it already initiated plans to accomplish the modification requirements on all of the affected airplanes in its fleet. The FAA infers from this statement that the commenters do not consider that the actions required by the proposed rule are necessary and that the commenters request the proposed AD be withdrawn.

The applicability in AD 95–08–04 did not include those airplanes modified in accordance with Supplemental Type Certificate (STC) SA4744NM. Therefore, although the commenter has chosen to comply with the requirement for the

modification specified by this AD (which is identical to the modification required by AD 95–08–04), it is still necessary to issue this AD to address the identified unsafe condition for airplanes modified in accordance with STC SA4744NM.

Request To Evaluate Other Electrical Connectors

The Airline Pilots Association (ALPA) supports the proposal and accomplishment of the modification of the connectors of the side wall lighting to minimize the possibility of connector failure that could cause arcing. However, ALPA is concerned that other electrical connectors may be susceptible to the same failure mode as the discrepant connectors identified in the proposed AD. For this reason, ALPA requests the FAA to evaluate the other connectors.

The FAA acknowledges the concerns of the commenter. However, the FAA does not consider it necessary to evaluate other electrical connectors on these airplanes because it has received no information of a recurring problem on other electrical connectors. In addition, the FAA does not consider that this AD is the appropriate context in which to address this concern because the suggested evaluations would alter the actions currently required by this AD, and additional rulemaking would be required. In light of the identified unsafe condition, the FAA finds that to delay this action would be inappropriate. No change has been made to the final rule.

Limiting the Applicability

Since the issuance of the notice of proposed rulemaking (NPRM), the FAA finds that it is necessary to revise the final rule to reflect a change in the applicability. After issuance of the NPRM, the FAA approved Revision C, dated October 27, 1997, of Heath Tecna Drawing List HPD–DL–34. (Revision A, dated March 7, 1989, and Revision B, dated February 16, 1990, are considered to be FAA-approved drawing lists for installation of the Heath Techna Aerospace Extended Spacial Concept Interior III, approved under STC SA4744NM.) Revision C incorporates corrective design changes into the ESCI III electrical installation such that the potential unsafe condition is eliminated. Therefore, if the actions specified by Revision C have been accomplished, it is unnecessary to comply with the requirements of this AD. In light of this, the applicability of this final rule has been revised to include only those airplanes on which the installation was accomplished in accordance with Revision A or B of the previously referenced drawing list, and to exclude those airplanes on which the installation was accomplished in accordance with Revision C of the drawing list.

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 changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 28 McDonnell Douglas Model DC–9–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 75 work hours (which includes access and functional check) per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,700 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $173,600, or $6,200 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.

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:

98–20–21 McDonnell Douglas: Amendment 39–10787. Docket 96–NM–270–AD.

Applicability: Model DC–9–80 series airplanes, equipped with Heath Tecna Aerospace Extended Spacial Concept Interior III installed in accordance with Revision A, dated March 7, 1989, or Revision B, dated February 16, 1990, of Heath Tecna Drawing List HPD–DL–34, as approved under Supplemental Type Certificate SA4744NM; certificated in any category. This AD does not apply to airplanes on which Heath Tecna Aerospace Extended Spacial Concept Interior III was installed in accordance with Revision C, dated October 27, 1997, of Heath Tecna Drawing List HPD–DL–34.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and consequently, connector burnthrough and smoke in the passenger cabin, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish paragraph (a)(1)

and (a)(2) of this AD, in accordance with Heath Tecna Service Bulletin H0655–33–01, dated March 28, 1996.

(1) Perform a visual inspection to detect discrepancies (i.e., damage, burn marks, and black or brown discoloration) of the electrical plugs and receptacles of the sidewall lighting system in the passenger cabin, and to verify that the ends of all pins and sockets are even and that they are seated and locked into place, in accordance with the service bulletin. If any discrepancy is detected, prior to further flight, replace the discrepant part with a new part in accordance with the service bulletin.

(2) Modify the electrical wiring and connectors of the sidewall lighting system in the passenger cabin in accordance with paragraph 2.H. of the Accomplishment Instructions of the service bulletin.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle 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) The actions shall be done in accordance with Heath Tecna Service Bulletin H0655–33–01, dated March 28, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hexcel Interiors (formerly Heath Tecna Aerospace), 3225 Woburn Street, Bellingham, Washington 98226. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25145 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 734, 740, 742, 743, 748, 750, 752, 770, 772, and 774

[Docket No. 980911233–8233–01]

RIN 0694–AB80

Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) by clarifying controls on the export and reexport of encryption items (EI) controlled for "EI" reasons on the Commerce Control List. This rule incorporates public comments on an interim rule published in the **Federal Register** on December 30, 1996, and implements new licensing policies for general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions in specified countries.

DATES: Effective Date: This rule is effective September 22, 1998. Comments: Comments on this rule must be received on or before November 6, 1998.

ADDRESSES: Written comments on this rule should be sent to Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1996, the Bureau of Export Administration (BXA) published in the **Federal Register** (61 FR 68572) an interim rule that exercises jurisdiction over, and imposes new combined national security and foreign policy controls on, certain encryption items that were on the United States Munitions List, consistent with Executive Order (E.O.) 13026 and pursuant to the Presidential Memorandum of that date, both issued by President Clinton on November 15, 1996.

BXA received comments from 45 commenters, and the comments fall into three broad categories: general concerns and objections to the policy embodied in the regulations; recommendations for specific changes or clarifications to the regulations that are consistent with the broad encryption policy implemented in the December 30 rule; and recommendations for additional changes to encryption policy.

Suggestions for Changes to Clarify Existing Policy

A number of commenters provided specific suggestions for changes or clarifications which are consistent with the intent of the policy and which would streamline or improve the regulations. Many of these suggestions are implemented in this rule, such as clarifying that the tools of trade provisions of License Exception TMP and License Exception BAG apply globally and clarifying that anti-virus software does not require a license for export.

Several commenters asked the Department of Commerce to adopt exemptions to license requirements which were available for encryption exporters under § 123.16(b)(2) and (b)(9) of the International Traffic and Arms Regulations (ITAR), such as those which allowed the export of components to a U.S. subsidiary or which allowed the export of spare parts and components without a license for an already approved sale. This rule adds these new provisions under License Exception TMP, making them applicable to encryption controlled items as well as other items eligible for TMP treatment.

Two commenters asked that the regulations clarify that the ITAR licensing policy for equipment specially made for and limited to the encryption of interbanking transactions had not changed with the transfer of jurisdiction of encryption products to the Department of Commerce. This interim rule clarifies that this equipment is not subject to EI controls.

Several commenters recommended a number of changes to the Key Escrow Product and Agent criteria found in Supplement Nos. 4 and 5 part to 742 of the EAR. These recommendations were to simplify the criteria, and to modify some of the specific prescriptions to allow for greater flexibility and variation on the part of exporters. Many commenters found the criteria too bureaucratic and legalistic to help advance U.S. encryption policy goals, while others noted that the criteria were still overly focused on key escrow and not consistent with the broader approach to key recovery found elsewhere in the regulation. Several commenters also encouraged the administration to make clear that it had moved beyond key escrow to key recovery in its policy. One commenter

focused on weaknesses and omissions found in the key escrow product and agent criteria found in Supplement Nos. 4 and 5 to part 742 of the EAR, and provided suggested additions to the criteria to make them more consistent with emerging business practices. The criteria specified in Supplement Nos. 4 and 5 were discussed extensively with industry prior to publication of the December 30 interim rule, and the rule reflects these discussions. However, BXA continues to look for ways to streamline the criteria, and will address revisions in a future regulation.

Several commenters expressed concerns over the longer processing time required for licenses at the Department of Commerce. Some commenters noted that the involvement of Departments of Energy and State, the Arms Control and Disarmament Agency and other agencies which did not review license applications for encryption products submitted to the Department of State added unnecessary levels of review and caused unwarranted delays. BXA is continuing to work with other reviewing Departments and Agencies to ensure expeditious review of encryption license applications. Many commenters noted that the requirements for a Department of Commerce license were substantially greater than what was required at the Department of State. The Department of Commerce, for example, requires an end-use certificate to be obtained for some destinations before approving an export; the Department of State did not and exporters question the need for this change. Other commenters noted that the Department of State licensing system was more flexible and faster for approvals of distribution and manufacturing arrangements. The Department of Commerce has no equivalent licenses, but is reviewing the possibility of such licenses. Many oral comments received since the close of the comment period note that unlike the Department of State, the Department of Commerce does not allow licenses to be amended, so that if an exporter has, for example, a license which allows him to ship to thirty countries and wishes to add one more, the Department of Commerce requires submission of an entire new license while the Department of State was content with a simple letter noting the requested change. This rule will now allow the addition of countries to an Encryption Licensing Arrangement by letter. BXA understands industry concerns about the license process under the EAR, and continues to look for ways to streamline the process.

Additional Recommendations for Changes to Encryption Policy

A number of commenters asked that the Administration revisit a number of decisions made in the course of the development of the encryption policy as reflected in the December 30 interim rule. Several asked that we reconsider and liberalize the treatment of Cryptographic Application Program Interface. Others questioned the addition of "defense services" controls similar to that contained in the ITAR (which prohibits U.S. persons from assisting foreign entities from developing their own indigenous encryption products). Several commenters objected to the structure of License Exception KMI for non-recoverable 56 bit products, with its requirement for a review every six months. Other commenters also called for a reversal of the decision to exempt transferred encryption items from normal Department of Commerce regulatory practices. Finally, several commenters recommended that the licensing criteria and License Exceptions applicable to other dual-use items be fully applicable to encryption products, such as considerations of foreign availability, the *de minimis* content exclusion, public domain treatment and the use of License Exceptions. This rule focuses on clarifications to existing encryption policy.

Based on public comments to the December 30 interim rule, this interim rule specifically makes the following changes:

—In §§ 732.2(d) and 732.3(e)(2), makes editorial corrections to clarify that encryption items controlled for "EI" reasons under ECCNs 5A002, 5D002 and 5E002 are not eligible for *De Minimis* treatment.

—In § 734.2, clarifies that downloading or causing the downloading of encryption source code and object code in Canada is not controlled and does not require a license.

—In § 740.6, clarifies that letters of assurance required for exports under License Exception TSR may be accepted in the form of a letter or any other written communication from the importer, including communications via facsimile.

—§ 740.8 is also amended by adding a new paragraph to authorize, after a one-time technical review, exports and reexports under License Exception KMI of non-recoverable financial-specific encryption software (which is not eligible under the provisions of License Exception TSU for mass market software, such as SET or similar protocols) and commodities of any key length that are restricted by design (e.g., highly field-formatted with validation procedures, and not easily diverted to other end-uses) for financial applications to secure financial transactions, for end-uses such as financial transfers or electronic commerce. No business and marketing plan to develop, produce, or market encryption items with recoverable features is required. Such exports and reexports are eligible to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Conforming changes are also made in § 742.15.

—§ 740.8 is also amended to authorize, after a one time review, exports and reexports under License Exception KMI of general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions (as defined in part 772 of the EAR) in destinations listed in new Supplement No. 3 to part 740, provided the end-use is limited to secure business financial communications or transactions or financial communications/transactions between the bank or financial institution and its customers. No customer to customer communications or transactions are permitted. Software and commodities that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export to banks and financial institutions under License Exception KMI without an additional one-time technical review. Note that no business or marketing plan is required. Conforming changes are also made in § 742.15. Software and commodities that have already been approved under an Encryption Licensing Arrangement to banks in specified countries may now be exported or reexported to other banks and financial institutions in those countries under the same Encryption Licensing Arrangement.

—In § 740.9, removes the reference to Country Group D:1. With this change, commodities and software are eligible for export under the tools of trade provisions of License Exception TMP to all destinations except countries listed in country group E:2 or Sudan. This also clarifies that encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and temporarily exported under the tools of trade provisions of License Exception TMP

to most countries, including those listed in Country Group D:1.

—Also in § 740.9, adds a new paragraph (a)(2)(ix) to authorize under License Exception TMP the export of components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country in Country Group B that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without a license or other authorization from BXA.

—In § 740.11, excludes items controlled for EI reasons from eligibility under the International Safeguards provisions of License Exception GOV.

—In § 740.14, clarifies existing provisions of License Exception BAG to distinguish temporary from permanent exports and imposes a restriction on the use of BAG for exports or reexports of EI-controlled items to terrorist supporting destinations or by persons other than U.S. citizens and permanent residents.

—New Supplement No. 3 to part 740 is added to list the countries eligible to receive under License Exception KMI general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions.

—In § 742.15, adds 40-bit DES as being eligible for consideration under the 15-day review, for mass-market eligibility, subject to the additional criteria listed in Supplement No. 6 to part 742.

—In § 742.15(b)(1), clarifies that subsequent bundling, updates or releases may be exported and reexported under applicable provisions of the EAR without a separate one-time technical review so long as the functional encryption capacity of the originally reviewed mass-market encryption software has not been modified or enhanced.

—New paragraph (b)(4) is added to § 742.15 to authorize exports and reexports under an Encryption Licensing Arrangement of general purpose non recoverable, non-voice encryption commodities and software of any key length for use by banks/financial institutions as defined in part 772 of the EAR in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. No business or marketing plan is required. Exports and reexports for the end-uses to secure business financial communications or between the bank and/or financial institution and its customers will receive favorable consideration. No customer to customer communications or transactions are eligible under the Encryption Licensing Arrangement.

—In Supplement No. 4 to part 742, paragraph (3), revises "reasonable frequency" to "at least once every three hours" to resolve the ambiguity on how often the output must identify the key recovery agent and material/information required to decrypt the ciphertext.

—In Supplement No. 4 to part 742, paragraph (6)(i), clarifies that the U.S. government must be able to obtain the key(s) or other material/information needed to decrypt all data, without restricting the means by which the key recoverable products allow this.

—In Supplement No. 6 to part 742 for 7-day mass-market classification requests, clarifies that a copy of the encryption subsystem source code may be used instead of a test vector to determine eligibility for License Exception TSU for mass market software.

—In § 743.1, requires reporting under the Wassenaar Arrangement for items controlled under ECCNs 5A002 and 5D002 when exported under specific provisions of License Exception KMI. This is not a new reporting requirement, but replaces and narrows the scope of the reporting requirement under the Encryption License Arrangement for financial-specific commodities and software and general purpose non-recoverable non-voice encryption commodities and software of any key length for distribution to banks and financial institutions that are eligible for License Exception KMI.

—In §§ 748.9 and 748.10, clarifies a long-standing policy that no support documentation is required for exports of technology or software, and it removes the requirement for such support documentation for exports of technology or software to Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovakia. This rule also exempts from support documentation requirements all encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002. This conforms with the practice under the ITAR prior to December 30, 1996.

—In § 750.7, allows requests to add countries of destination to Encryption Licensing Arrangements by letter.

—In § 752.3, excludes encryption items controlled for EI reasons from eligibility for a Special Comprehensive License.

—In § 770.2, adds a new interpretation to clarify that encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions.

—In part 772, adds new definitions for "bank", "effective control", "encryption licensing arrangement", and "financial institution".

—In Supplement No. 1 to part 774, Category 5—Telecommunications and Information Security is amended by revising ECCN 5A002 to authorize exports of components and spare parts under License Exception LVS, provided the value of each order does not exceed $500 and the components and spare parts are destined for items previously authorized for export, and to clarify that equipment for the encryption of interbanking transactions is not controlled under that entry.

—Revises the phrase "up to 56-bit key length DES" where it appears to read "56-bit DES or equivalent", and makes other editorial changes.

Note that this rule does not affect exports or reexports authorized under licenses issued prior to the effective date of this rule.

Several commenters also noted that the exemptions found under § 125.4(b) of the ITAR should be implemented in the EAR. Most of the exemptions found in § 125.4(b) of the ITAR are already available under existing provisions of the EAR. For example, § 125.4(b)(4) of the ITAR authorizes exports without a license of copies of technical data previously authorized for export. The EAR has no restrictions on the number of copies sent to a consignee authorized to receive technology under license or a License Exception. Section 125.4(b)(5) authorizes exports without a license of technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export provided the technical data is for use by the same recipient. Further, Section 125.4(2) authorizes exports of technical data in furtherance of a manufacturing license or technical assistance agreement. License Exception

TSU for operation technology and software (see § 740.13 of the EAR) authorizes the export and reexport of the minimum technology necessary for the installation, operation, maintenance and repair of those products (including software) that are lawfully exported or reexported under a license, a License Exception, or non license required (NLR). Section 125.4(b)(7) of the ITAR allows the return of technical data to the original source of import. License Exception TMP similarly authorizes the return of any foreign-origin item, including technology, to the country from which it was imported if the characteristics have not been enhanced while in the United States (see § 740.9(b)(3) of the EAR).

BXA has also received many inquiries on Shipper's Export Declaration (SED) requirements for Canada. Note that the EAR do not require exporters to file an SED for exports of any item to Canada for consumption in Canada, unless a license is required. Further note that a license is not required for exports of encryption items for consumption in Canada, including certain exports over the Internet. Finally, BXA has received many requests for clarification on SED requirements for electronic transfers. Neither the EAR nor the FTSR provide for the filing of SEDs for electronic transfers of items controlled by the Department of Commerce under the EAR .

As further clarifications and changes to the encryption provisions of the EAR are intended, in particular regarding Supplement Nos. 4 and 5 to part 742 of the EAR, BXA will publish additional interim rules in the **Federal Register**.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E. O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission; and 0694–0104, "Commercial Encryption Items Transferred from the Department of State to the Department of Commerce," which carries the following burden hours: marketing plans (40 hours each); semiannual progress reports (8 hours each); safeguard procedures (4 hours); recordkeeping (2 hours); annual reports (4 hours); and Encryption Licensing Arrangement letters (15 minutes).

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department of Commerce encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 6, 1998. The Department of Commerce will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department of Commerce will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department of Commerce requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations (CFR). Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Parts 732, 740, 743, 748, 750, and 752

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 742, 770, 772 and 774

Exports, foreign trade.

Accordingly, 15 CFR chapter VII, subchapter C, is amended as follows:

1. The authority citation for 15 CFR parts 732, 740, 748, 752 and 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

2. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*;

22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

4. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

5. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); E.O. 12981, 60 FR 62981; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

6. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

7. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 732—[AMENDED]

§ 732.2 [Amended]

8. Section 732.2(d) amended by revising the phrase "ECCN 5A002 or ECCN 5D002" to read "ECCNs 5A002, 5D002 or 5E002".

§ 732.3 [Amended]

9. Section 732.3(e)(2) is amended by revising the phrase "ECCN 5A002 or ECCN 5D002" to read "ECCNs 5A002, 5D002 or 5E002".

PART 734—[AMENDED]

10. Section 734.2 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ 734.2 Important EAR terms and principles.

(a) * * *

(b) * * *

(9) * * *

(ii) The export of encryption source code and object code software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S. (except Canada), or making such software available for transfer outside the United States (except Canada), over wire, cable, radio, electromagnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States (except Canada), including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code outside the United States or Canada. Such precautions shall include ensuring that the facility from which the software is available controls the access to and transfers of such software through such measures as:

(A) The access control system, either through automated means or human intervention, checks the address of every system requesting or receiving a transfer and verifies that such systems are located within the United States or Canada;

(B) The access control system provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Regulations, and that anyone receiving such a transfer cannot export the software without a license; and

(C) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that he or she understands that the cryptographic software is subject to export controls under the Export Administration Regulations and that anyone receiving the transfer cannot export the software without a license. BXA will consider acknowledgments in electronic form provided that they are adequate to assure legal undertakings similar to written acknowledgments.

* * * * *

§ 734.4 [Amended]

11. Section 734.4 is amended by revising the phrase "ECCN, 5A002, ECCN 5D002, and 5E002" in paragraph (b)(2) to read "ECCNs 5A002, 5D002, and 5E002".

PART 740—[AMENDED]

12. Section 740.3 is amended by adding a new paragraph (d)(5) to read as follows:

§ 740.3 Shipments of limited value (LVS).

* * * * *

(d) * * *

(5) *Exports of encryption items.* For components or spare parts controlled for "EI" reasons under ECCN 5A002, exports under this License Exception must be destined to support an item previously authorized for export.

* * * * *

13. Section 740.6 is amended by revising the first sentence in paragraph (a)(3) to read as follows:

§ 740.6 Technology and software under restriction (TSR).

(a) * * *

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. * * *

* * * * *

14. Section 740.8 is amended:

(a) By revising paragraph (b)(2);

(b) By revising the phrase "recovery encryption software and equipment" in paragraph (d)(1) to read "recoverable encryption items";

(c) By revising the phrase "March 1 and no later than September 1" in paragraph (e)(2) to read "February 1 and no later than August 1", as follows:

§ 740.8 Key management infrastructure.

* * * * *

(b) * * *

(2)(i) *Non-recoverable encryption commodities and software.* Eligible items are non-recoverable 56-bit DES or equivalent strength commodities and software controlled under ECCNs 5A002 and 5D002 that are made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(2) of this section.

(ii) *Non-recoverable financial-specific encryption commodities and software of any key length.* (A)(1) After a one-time technical review through a classification request (see § 748.3 of the EAR), non-recoverable, financial-specific encryption software (which is not eligible under the provisions of License Exception TSU for mass market software such as SET or similar protocols); and commodities of any key length that are

restricted by design (e.g., highly field-formatted with validation procedures, and not easily diverted to other end-uses) for financial applications to secure financial communications/transactions for end-uses such as financial transfers, or electronic commerce will be permitted under License Exception KMI for export and reexport to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(*2*) For such classification requests, indicate "License Exception KMI" in block #9 on Form BXA748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to: Attn: Financial Specific Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(B) Upon approval of your classification request for a non-recoverable financial-specific encryption commodities or software, you will become eligible to use License Exception KMI. This approval allows the export or reexport of encryption commodities and software specifically designed and limited for use in the processing of electronic financial (commerce) transactions, which implements cryptography in specifically delineated fields such as merchant's identification, the customer's identification and address, the merchandise purchased, and the payment mechanism. It does not allow for encryption of data, text or other media except as directly related to these elements of the electronic transaction to support financial communications/ transactions. For exports and reexports under the provisions of this paragraph (b)(2)(ii), no business and marketing plan is required, and the reporting requirements of paragraph (e) of this section and the criteria described in Supplement Nos. 4 and 5 to part 742 of the EAR are not applicable. However, you are subject to the reporting requirements of the Wassenaar Arrangement (see § 743.1 of the EAR)

(iii) *General purpose non-recoverable encryption commodities or software of any key length for use by banks/ financial institutions.* (A)(1) After a one-time technical review through a classification request (see § 748.3 of the EAR), exports and reexports of general purpose non-recoverable non-voice encryption commodities or software of any key length will be permitted under License Exception KMI for distribution to banks and financial institutions as defined in part 772 of the EAR in all destinations listed in Supplement No. 3 to part 740 of the EAR, and to branches of such banks and financial institutions wherever located. The end-use is limited to secure business financial communications or transactions and financial communications/ transactions between the bank and/or financial institution and its customers. No customer to customer communications/ transactions are permitted.

(*2*) For such classificiation requests, indicate "License Exception KMI" in block #9 on Form BXA748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to: Attn: Financial Specific Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(*3*) Upon approval of your classification request for a non-recoverable financial-specific encryption commodities or software, you will become eligible to use License Exception KMI.

(B) Software and commodities that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export under the provisions of this paragraph (b)(2)(iii) without an additional one-time technical review.

(C) Software and commodities that have already been approved under an Encryption Licensing Arrangement to banks and financial institutions in specified countries may now be exported or reexported to other banks and financial institutions in those countries under the same Encryption Licensing Arrangement.

(D) For exports and reexports under the provisions of this paragraph (b)(2)(iii), no business and marketing plan is required and the reporting requirements of paragraph (e) of this section are not applicable. However, you are subject to the reporting requirements of the Wassenaar Arrangement (see § 743.1 of the EAR).

* * * * *

15. Section 740.9 is amended:

a. By revising paragraph (a)(2)(i);

b. By revising the reference to "§ 740.9(a)" in paragraph (a)(2)(ii)(C) to read "§ 740.10(a)";

c. By revising the reference to "under § 740.8(b)(1)" in the introductory text of paragraph (b)(1)(iii) to read "under this paragraph (b)(1)"; and

d. By adding a new paragraph (a)(2)(ix) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use by the exporter or employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible tools of trade may include, but are not limited to, such equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The tools of trade must remain under the effective control of the exporter or the exporter's employee (see part 772 of the EAR for a definition of "effective control"). The shipment of tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2 (see Supplement No. 1 to part 740) or Sudan. For exports under this License Exception of laptop computers loaded with encryption software, refer to item interpretation 13 in § 770.2 of the EAR.

* * * * *

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.* (A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without prior authorization by BXA.

(B) For purposes of this paragraph (a)(2)(ix), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is

incorporated to do business in the United States).

* * * * *

§ 740.10 [Amended]

16. Section 740.10 is amended by revising the reference to "§ 740.8(a)(2)(ii)" in paragraph (a)(2)(i) to read "§ 740.9(a)(2)(ii)".

17. Section 740.11 is amended by adding new paragraph (a)(3) to read as follows:

§ 740.11 Governments and international organizations (GOV).

* * * * *

(a) *International safeguards.* * * *

(3) No encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may be exported under the provisions of this paragraph (a).

* * * * *

18. Section 740.14 is amended by revising paragraphs (a), (b), and (c); by adding a sentence to the end of paragraph (d); and by adding paragraph (f) to read as follows:

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States temporarily (i.e., traveling) must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) *Personal effects.* Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) *Household effects.* Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household being moved. For special provisions regarding encryption items subject to EI controls, see paragraph (f) of this section.

(c) *Limits on eligibility.* The export of any commodity or software is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the commodities or software must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families traveling with them, or by the crew members of exporting carriers;

(3) Not intended for sale or other disposal; and

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) * * * No items controlled for EI reasons may be exported or reexported as unaccompanied baggage.

* * * * *

(f) *Special provisions: encryption software subject to EI controls.* (1) Only a U.S. citizen or permanent resident as defined by 8 U.S.C. 1101(a)(20) may permanently export or reexport encryption items controlled for EI reasons under this License Exception.

(2) The U.S. citizen or permanent resident must maintain effective control of the encryption items controlled for EI reasons.

(3) The encryption items controlled for EI reasons may not be exported or reexported to Country Group E:2, Iran, Iraq, Sudan, or Syria.

19. New Supplement No. 3 is added to read as follows:

Supplement No. 3 To Part 740—Countries Eligible To Receive General Purpose Encryption Commodities and Software for Banks and Financial Institutions

Anguilla
Antigua
Argentina
Aruba
Australia
Austria
Bahamas
Barbados
Belgium
Brazil
Canada
Croatia
Denmark
Dominica
Ecuador
Finland
France
Germany
Greece
Hong Kong
Hungary
Iceland
Ireland
Italy
Japan
Kenya
Luxembourg
Monaco
Netherlands
New Zealand
Norway
Poland
Portugal
St. Kitts & Nevis
St. Vincent/Grenadines
Seychelles
Singapore
Spain
Sweden
Switzerland
Trinidad & Tobago
Turkey
Uruguay
United Kingdom

PART 742—[AMENDED]

20. Section 742.15 is amended:

a. By revising paragraph (b)(1);

b . By revising the phrase "up to 56-bit key length DES or equivalent strength" to read "56-bit DES or equivalent" in paragraph (b)(3) wherever it appears;

c.–d. By revising the phrase "The use of License Exception KMI" in the seventh sentence of paragraph (b)(3)(i) to read "Authorization to use License Exception KMI';

e. By redesignating paragraphs (b)(4) and (5) as (b)(6) and (7);

f. By adding new paragraphs (b)(4) and (b)(5); and

g. By revising newly designated paragraph (b)(6)(i) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * *

(1) *Certain mass-market encryption software.* (i) Consistent with E.O. 13026 of November 15, 1996 (61 FR 58767), certain encryption software that was transferred from the U.S. Munitions List to the Commerce Control List pursuant to the Presidential Memorandum of November 15, 1996 may be released from EI controls and thereby made eligible for mass market treatment after a one-time technical review. To determine eligibility for mass market

treatment, exporters must submit a classification request to BXA. 40-bit mass market encryption software using RC2 or RC4 may be eligible for a 7-day review process, and company proprietary software or 40-bit DES implementations may be eligible for 15-day processing. Refer to Supplement No. 6 to part 742 and § 748.3(b)(3) of the EAR for additional information. Note that the one-time technical review is for a determination to release encryption software in object code only unless otherwise specifically requested. Exporters requesting release of the source code should refer to paragraph (b)(3)(v)(E) of Supplement No. 6 to part 742.

(ii) If, after a one-time technical review, BXA determines that the software is released from EI controls, such software is eligible for all provisions of the EAR applicable to other software, such as License Exception TSU for mass-market software. Furthermore, for such software released from EI controls, subsequent bundling, updates, or releases consisting of or incorporating this software may be exported and reexported without a separate one-time technical review, so long as the functional encryption capacity (e.g., algorithm, key modulus) of the originally reviewed mass-market encryption software has not been modified or enhanced. However, if BXA determines that the software is not released from EI controls, a license is required for export and reexport to all destinations, except Canada, and license applications will be considered on a case-by-case basis.

(2) * * *

(3) * * *

(4) *General purpose non-recoverable encryption commodities or software of any key length for use by banks/financial institutions.* (i) Commodities and software that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export under License Exception KMI (see § 740.8(b)(2)(iii) of the EAR) without an additional one-time technical review, providing that the export meets all the terms and conditions of License Exception KMI.

(ii) For exports not eligible under License Exception KMI, exports of general purpose non-recoverable non-voice encryption commodities or software of any key length will be permitted under an Encryption Licensing Arrangement for use by banks and financial institutions as defined in part 772 of the EAR in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. No business or marketing plan is required. Applications for such commodities and software will receive favorable consideration when the end-use is limited to secure business financial communications or transactions and financial communications/ transactions between the bank and/or financial institution and its customers, and provided that there are no concerns about the country or financial end-user. No customer to customer communications or transactions are allowed. Furthermore, licenses for such exports will require the license holder to report to BXA information concerning the export such as export control classification number, number of units in the shipment, and country of ultimate destination. Note that any country or end-user prohibited to receive encryption commodities and software under a specific Encryption Licensing Arrangement is reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(5) *Non-recoverable financial-specific encryption items of any key length.* After a one-time technical review via a classification request, non-recoverable financial-specific encryption items of any key length that are restricted by design (e.g. highly field-formatted and validation procedures, and not easily diverted to other end-uses) for financial applications will be permitted for export and reexport under License Exception KMI (see § 740.8 of the EAR). No business and marketing plan is required.

(6) *All other encryption items.* (i) *Encryption licensing arrangement.* Applicants may submit license applications for exports and reexports of certain encryption commodities and software in unlimited quantities for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. Applications will be reviewed on a case-by-case basis. If approved, encryption licensing arrangements may be valid for extended periods as requested by the applicant in block #24 on Form BXA–748P. In addition, the applicant must specify the sales territory and class(es) of end-user(s). Such licenses may require the license holder to report to BXA certain information such as ECCN, item description, quantity, and end-user name and address.

* * * * *

21. Part 742 is amended by revising Supplement Nos. 4 and 6 to read as follows:

Supplement No. 4 to Part 742—Key Escrow or Key Recoverable Products Criteria

Key Recoverable Feature

(1) The key(s) or other material/information required to decrypt ciphertext shall be accessible through a key recoverable feature.

(2) The product's cryptographic functions shall be inoperable until the key(s) or other material/information required to decrypt ciphertext is recoverable by government officials under proper legal authority and without the cooperation or knowledge of the user.

(3) The output of the product shall automatically include, in an accessible format and with a frequency of at least once every three hours, the identity of the key recovery agent(s) and information sufficient for the key recovery agent(s) to identify the key(s) or other material/information required to decrypt the ciphertext.

(4) The product's key recoverable functions shall allow access to the key(s) or other material/information needed to decrypt the ciphertext regardless of whether the product generated or received the ciphertext.

(5) The product's key recoverable functions shall allow for the recovery of all required decryption key(s) or other material/information required to decrypt ciphertext during a period of authorized access without requiring repeated presentations of access authorization to the key recovery agent(s).

Interoperability Feature

(6) The product's cryptographic functions may:

(i) Interoperate with other key recoverable products that meet these criteria, and shall not interoperate with products whose key recovery feature has been altered, bypassed, disabled, or otherwise rendered inoperative;

(ii) Send information to non-key recoverable products only when assured access is permitted to the key(s) or other material/information needed to decrypt ciphertext generated by the key recoverable product. Otherwise, key length is restricted to less than or equal to 56-bit DES or equivalent.

(iii) Receive information from non-key recoverable products with a key length restricted to less than or equal to 56-bit DES or equivalent.

Design, Implementation and Operational Assurance

(7) The product shall be resistant to efforts to disable or circumvent the attributes described in criteria one through six.

(8) The product's cryptographic function's key(s) or other material/information required to decrypt ciphertext shall be escrowed with a key recovery agent(s) (who may be a key recovery agent(s) internal to the user's organization) acceptable to BXA, pursuant to the criteria in supplement No. 5 to part 742. Since the establishment of a key management infrastructure and key recovery agents may take some time, BXA will, while the infrastructure is being built, consider exports of key recoverable encryption products which facilitate establishment of the key management infrastructure before a key recovery agent is named.

Supplement No. 6 To Part 742—Guidelines for Submitting a Classification Request for a Mass Market Software Product That Contains Encryption

Classification requests for release of certain mass market encryption software from EI controls must be submitted on Form BXA–748P, in accordance with § 748.3 of the EAR. To expedite review of the request, clearly mark the envelope "Attn.: Mass Market Encryption Software Classification Request". In Block 9: Special Purpose of the Form BXA–748P, you must insert the phrase "Mass Market Encryption Software. Failure to insert this phrase will delay processing. In addition, the Bureau of Export Administration recommends that such requests be delivered via courier service to: Bureau of Export Administration, Office of Exporter Services, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230.

In addition, send a copy of the request and all supporting documents by Express Mail to: Attn: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(a) Requests for mass market encryption software that meet the criteria in paragraph (a)(2) of this Supplement will be processed in seven (7) working days from receipt of a properly completed request. Those requests for mass market encryption software that meet the criteria of paragraph (a)(1) of this supplement only will be processed in fifteen (15) working days from receipt of a properly completed request. When additional information is requested, the request will be processed within 15 working days of the receipt of the requested information.

(1) A mass market software product that meets all the criteria established in this paragraph will be processed in fifteen (15) working days from receipt of the properly completed request:

(i) The commodity must be mass market software. Mass market software is computer software that is available to the public via sales from stock at retail selling points by means of over-the-counter transactions, mail order transactions, or telephone call transactions;

(ii) The software must be designed for installation by the user without further substantial support by the supplier. Substantial support does not include telephone (voice only) help line services for installation or basic operation, or basic operation training provided by the supplier; and

(iii) The software includes encryption for data confidentiality.

(2) A mass market software product that meets all the criteria established in this paragraph will be processed in seven (7) working days from receipt of the properly completed request:

(i) The software meets *all* the criteria established in paragraph (a)(1)(i) through (iii) of this supplement;

(ii) The data encryption algorithm must be RC4 or RC2 with a key space no longer than 40-bits. The RC4 and RC2 algorithms are proprietary to RSA Data Security, Inc. To ensure that the subject software is properly licensed and correctly implemented, contact RSA Data Security, (415) 595–8782;

(iii) If any combination of RC4 or RC2 are used in the same software, their functionality must be separate. That is, no data can be operated sequentially on by both routines or multiply by either routine;

(iv) The software must not allow the alteration of the data encryption mechanism and its associated key spaces by the user or any other program;

(v) The key exchange used in data encryption must be:

(A) A public key algorithm with a key space less than or equal to a 512-bit modulus and/or;

(B) A symmetrical algorithm with a key space less than or equal to 64-bits; and

(vi) The software must not allow the alteration of the key management mechanism and its associated key space by the user or any other program.

(b) To submit a classification request for a product that is eligible for the seven-day handling, you must provide the following information in a cover letter to the classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to: Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

Instructions for the preparation and submission of a classification request that is eligible for seven day handling are as follows:

(1) If the software product meets the criteria in paragraph (a)(2) of this supplement, you must call the Department of Commerce on (202) 482–0092 to obtain a test vector, or submit to BXA a copy of the encryption subsystem source code. The test vector or source code must be used in the classification process to confirm that the software has properly implemented the approved encryption algorithms.

(2) Upon receipt of the test vector, the applicant must encrypt the test plain text input provided using the commodity's encryption routine (RC2 and/or RC4) with the given key value. The applicant should not pre-process the test vector by any compression or any other routine that changes its format. Place the resultant test cipher text output in hexadecimal format on an attachment to form BXA–748P.

(3) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page "Mass Market Encryption Software—7 Day Expedited Review Requested';

(ii) State that you have reviewed and determined that the software subject to the classification request meets the criteria of paragraph (a)(2) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State how the software has been written to preclude user modification of the encryption algorithm, key management mechanism, and key space;

(v) Provide the following information for the software product:

(A) Whether the software uses the RC2 or RC4 algorithm and how the algorithm(s) is used. If any combination of these algorithms are used in the same product, also state how the functionality of each is separated to assure that no data is operated by more than one algorithm;

(B) Pre-processing information of plaintext data before encryption (e.g. the addition of clear text header information or compression of the data);

(C) Post-processing information of cipher text data after encryption (e.g. the addition of clear text header information or packetization of the encrypted data);

(D) Whether a public key algorithm or a symmetric key algorithm is used to encrypt keys and the applicable key space;

(E) For classification requests regarding source code:

(1) Reference the applicable executable product that has already received a one-time technical review;

(2) Include whether the source code has been modified by deleting the encryption algorithm, its associated key management routine(s), and all calls to the algorithm from the source code, or by providing the encryption algorithm and associated key management routine(s) in object code with all calls to the algorithm hidden. You must provide the technical details on how you have modified the source code;

(3) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines, and their related calls; and

(F) Provide any additional information which you believe would assist in the review process.

(c) Instructions for the preparation and submission of a classification request that is eligible for 15-day handling are as follows:

(1) If the software product meets only the criteria in paragraph (a)(1) of this supplement, you must prepare a classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to: Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(2) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page "Mass Market Software and Encryption: 15-Day Expedited Review Requested';

(ii) State that you have reviewed and determined that the software subject of the classification request, meets the criteria of paragraph (a)(1) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State that a duplicate copy, in accordance with paragraph (c)(1) of this supplement, has been sent to the 15-day Encryption Request Coordinator; and

(v) Ensure that the information provided includes brochures or other documentation or specifications relating to the software, as well as any additional information which you believe would assist in the review process.

(3) Contact the Bureau of Export Administration on (202) 482–0092 prior to

submission of the classification to facilitate the submission of proper documentation.

PART 743—[AMENDED]

§ 743.1 [Amended]

22. Section 743.1 is amended by revising the phrase "and GOV" in paragraph (b) to read "GOV and KMI (under the provisions of § 740.8(b)(2)(ii) and (iii) only".

PART 748—[AMENDED]

23. Section 748.9 is amended by revising paragraph (a)(7) and by adding new paragraph (a)(8) to read as follows:

§ 748.9 Support documents for license applications.

(a) * * *

(7) The license application is submitted to export or reexport software or technology.

(8) The license application is submitted to export or reexport encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002.

* * * * *

24. Section 748.10 is amended by revising paragraph (b)(1) to read as follows:

§ 748.10 Import and End-User Certificates.

* * * * *

(b) * * *

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002;

* * * * *

PART 750—[AMENDED]

25. Section 750.3 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 750.3 Review of license applications by BXA and other government agencies and departments.

* * * * *

(b) * * *

(2) * * *

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons and with controls related to encryption items;

* * * * *

26. Section 750.7 is amended:

a. By redesignating paragraphs (c) introductory text through (c)(5) as (c)(1) introductory text through (c)(1)(v);

b. By redesignating paragraphs (c)(6) introductory text through (c)(6)(v) as (c)(1)(vi) introductory text through (c)(1)(vi)(E);

c. By redesignating paragraphs (c)(7) and (8) as (c)(1)(vii) and (viii); and

d. By adding a new paragraph (c)(2) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(c) * * *

(2)(i) For Encryption Licensing Arrangements issued by BXA for exports and reexports of items controlled under ECCN 5A002, 5B002, and 5D002, and for encryption commodities and software previously on the U.S. Munitions List and currently authorized for export or reexport under a State Department license, distribution arrangement or any other authority of the State Department, you must by letter to BXA a request for approval of any additional country of destination.

(ii) Letters requesting changes pursuant to paragraph (c)(2)(i) of this section should be made by the license holder on company letterhead, clearly identifying the original license number and the requested change. In addition, requests for changes to State licenses or other authorizations must be accompanied by a copy of the original State license or authorization. The requested changes may not take effect until approved in writing by BXA. Send requests for changes to the following address: Office of Strategic Trade, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230, Attn: Encryption Division.

* * * * *

PART 752—[AMENDED]

27. Section 752.3 is amended by redesignating paragraphs (a)(5) through (a)(10) as (a)(6) through (a)(11) and adding a new paragraph (a)(5) to read as follows:

§ 752.3 Eligible items.

(a) * * *

(5) Items controlled for EI reasons on the CCL;

* * * * *

PART 758—[AMENDED]

28. Section 758.1 is amended by adding a new paragraph (e)(1)(i)(D) to read as follows:

§ 758.1 Export clearance requirements.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(D) Exports of tools of trade under License Exception TMP or BAG.

* * * * *

PART 770—[AMENDED]

29. Section 770.2 is amended by revising the section title and adding a new paragraph (m) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(m) *Interpretation 13: Encryption software controlled for EI reasons.* Encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception BAG contains a reporting requirement.

PART 772—[AMENDED]

30. Part 772 is amended by adding, in alphabetical order, new definitions for "Bank", "Effective control", "Encryption licensing arrangement", and "Financial Institution", and revising paragraph (b) under the definition of "U.S. person" to read as follows:

* * * * *

Bank. Means any of the following:

(a) Bank, savings association, credit union, bank holding company, bank or savings association service corporation, Edge Act corporation, Agreement corporation, or any insured depository institution, which is organized under the laws of the United States or any State and regulated or supervised by a Federal banking agency or a State bank supervisor; or

(b) A company organized under the laws of a foreign country and regulated or supervised by a foreign bank regulatory or supervisory authority which engages in the business of banking, including without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating; or

(c) An entity engaged in the business of providing clearing or settlement services, that is, or whose members are, regulated or supervised by a Federal banking agency, a State bank supervisor, or a foreign bank regulatory or supervisory authority; or

(d) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or

(c) of this definition, regulated or supervised by a Federal banking agency, a State bank supervisor or a foreign bank regulatory or supervisory authority; or

(e) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (d) of this definition, engaged solely in the business of providing data processing services to a bank or financial institution, or a branch of such an affiliate.

* * * * *

Effective control. You maintain effective control over an item when you either retain physical possession of the item, or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility. Retention of effective control over an item is a condition of certain temporary exports and reexports.

Encryption licensing arrangement. A license that allows the export of specified products to specified destinations in unlimited quantities. In certain cases, exports are limited to specified end-users for specified end-uses. Generally, reporting of all sales of the specified products is required at six month intervals. This includes sales made under distribution arrangements and distribution and warehousing agreements that were previously issued by the Department of State for encryption items.

* * * * *

Financial Institution. Means any of the following:

(a) A broker, dealer, government securities broker or dealer, self-regulatory organization, investment company, or investment adviser, which is regulated or supervised by the Securities and Exchange Commission or a self-regulatory organization that is registered with the Securities and Exchange Commission; or

(b) A broker, dealer, government securities broker or dealer, investment company, investment adviser, or entity that engages in securities activities that, if conducted in the United States, would be described by the definition of the term "self-regulatory organization" in the Securities Exchange Act of 1934, which is organized under the laws of a foreign country and regulated or supervised by a foreign securities authority; or

(c) A US board of trade that is designated as a contract market by the Commodity Futures Trading Commission or a futures commission merchant that is regulated or supervised by the Commodity Futures Trading Commission; or

(d) A US entity engaged primarily in the business of issuing a general purpose charge, debit, or stored value card, or a branch of, or affiliate controlled by, such an entity; or

(e) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or (c) of this definition regulated or supervised by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or a foreign securities authority; or

(f) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (e) of this definition, engaged solely in the business of providing data processing services to one or more bank or financial institutions, or a branch of such an affiliate.

* * * * *

U.S. person. (a) * * *

(b) See also §§ 740.9 and 740.14, and parts 746 and 760 of the EAR for definitions of "U.S. person" that are specific to those parts.

* * * * *

PART 774—[AMENDED]

31. In Supplement No. 1 to part 774, Category 5—Telecommunications and Information Security is amended by revising ECCNs 5A002 and 5D002 to read as follows:

5A002 Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", and specially designed components therefor.

License Requirements

Reason for Control: NS, AT, EI.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of this subchapter.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports of commodities controlled under 5A002 and exported under License Exceptions LVS or GOV.

License Exceptions

LVS: Yes: $500 for components and spare parts only. N/A for equipment.

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: See also 5A992. This entry does not control: (a) "Personalized smart cards" or specially designed components therefor, with any of the following characteristics: (1) Not capable of message traffic encryption or encryption of user-supplied data or related key management functions therefor; or (2) When restricted for use in equipment or systems excluded from control under the note to 5A002.c, or under paragraphs (b) through (h) of this note. (b) Equipment containing "fixed" data compression or coding techniques; (c) Receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions; (d) Portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radiocommunications systems) that are not capable of end-to-end encryption; (e) Decryption functions specially designed to allow the execution of copy-protected "software", provided the decryption functions are not user-accessible; (f) Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities but does not allow for encryption of files or text, except as directly related to the password or PIN protection; (g). Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication; (h) Cryptographic equipment specially designed, developed or modified for use in machines for banking or money transactions, and restricted to use only in such transactions. Machines for banking or money transactions include automatic teller machines, self-service statement printers, point of sale terminals, or equipment for the encryption of interbanking transactions.

Related Definitions: For the control of global navigation satellite systems receiving equipment containing or employing decryption (i.e. GPS or GLONASS), see 7A005. *Items:*

a. Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", and specially designed components therefor:

a.1. Designed or modified to use "cryptography" employing digital techniques to ensure "information security";

a.2. Designed or modified to perform cryptoanalytic functions;

a.3. Designed or modified to use "cryptography" employing analog techniques to ensure "information security";

Note: 5A002.a.3 does not control the following:

1. Equipment using "fixed" band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

2. Equipment using "fixed" band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

3. Equipment using "fixed" frequency inversion and in which the transpositions change not more frequently than once every second;

4. Facsimile equipment;

5. Restricted audience broadcast equipment; and 6. Civil television equipment;

a.4. Designed or modified to suppress the compromising emanations of information-bearing signals;

Note: 5A002.a.4 does not control equipment specially designed to suppress emanations for reasons of health and safety.

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" or the hopping code for "frequency agility" systems;

a.6. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.7. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

* * * * *

5D002 Information Security—"Software".

License Requirements

Reason for Control: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other "software"; and for the export licensing purposes encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002. License Exceptions for commodities are not applicable.

Note: Encryption software controlled for EI reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR, and it is not eligible for the General Software Note ("mass market" treatment under License Exception TSU for mass market software). After a one-time BXA review, certain encryption software may be released from EI controls and made eligible for the General Software Note treatment as well as other provisions of the EAR applicable to software. Refer to § 742.15(b)(1) of the EAR, and Supplement No. 6 to part 742 of the EAR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports of software controlled under 5D002 and exported under License Exception GOV.

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: $ value

Related Controls: See also 5D992. This entry does not control "software" "required" for the "use" of equipment excluded from control under to 5A002 or "software" providing any of the functions of equipment excluded from control under 5A002.

Related Definitions: N/A

Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 5A002, 5B002 or 5D002.

b. "Software" specially designed or modified to support "technology" controlled by 5E002.

c. Specific "software" as follows:

c.1. "Software" having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;

c.2. "Software" to certify "software" controlled by 5D002.c.1.

Dated: September 14, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–25096 Filed 9–21–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR–4298–N–02]

RIN 2502–AH09

Notice of Public Meetings Multifamily Housing Mortgage and Housing Assistance Restructuring (Mark-to-Market) Program

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

ACTION: Notice of public forums.

SUMMARY: On September 11, 1998 (63 FR 48925), the Department published in the **Federal Register** an interim rule implementing the Mark-to-Market Program. The Program was enacted by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance, and minimizing the adverse effect on the FHA insurance funds. The authorizing statute provides that before publishing the final rule HUD is to conduct at least three public forums at which organizations representing various groups identified in the statute may express views concerning HUD's proposed disposition of recommendations from those groups. This notice announces the time and places for these public forums.

DATES: The public forums will be held on Thursday, October 1, 1998, from 1 p.m. to 7:30 p.m. local time.

ADDRESSES: The public forums will be held at the following three locations:

Midland Hotel (Adams Room), 175 West Adams, Chicago, Illinois

Holiday Inn Golden Gateway, 1500 Van Ness Avenue, San Francisco, California

The College of Insurance, 101 Murray Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: Leslie Breden, (202) 708–6423, ext. 5603. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. For registration information call 1–800–685–8470, the Multifamily Housing Clearinghouse, (fax) (301)–519–5161. (Except for the 800 numbers, these are not toll-free numbers.) Additional information is available on HUD's Internet web site, at http://www.hud.gov/fha/mfh/pre/premenu.html.

SUPPLEMENTARY INFORMATION:

What Will Be Discussed at the Forums?

Section 522(a)(3)(A) of MAHRA directed HUD to seek recommendations on implementing the participating administrative entity selection criteria (see section 513(b) of MAHRA and § 401.201 of the interim rule) and on mandatory renewal of project-based assistance (see section 515(c)(1) of MAHRA and § 401.420 of the interim rule). In accordance with section 513(a)(3)(A), HUD has received recommendations from at least the following organizations: State housing finance agencies and local housing agencies; other potential participating administering entities; tenants; owners and managers of eligible multifamily housing projects; States and units of general local government; and qualified mortgagees. The recommendations covered the scope of the interim rule.

In accordance with section 522(a)(3)(B) of MAHRA, HUD is holding these public forums to provide participants with an opportunity to express their views on § 401.201 and § 401.420 of the interim rule. HUD will not be making any presentations at these forums. The purpose of these forums is for HUD to listen and record the comments of the forum participants for consideration in drafting the final rule.

How Can I Register for a Forum?

You can get registration information through HUD's portfolio reengineering

website at http:www.hud.gov/fha/pre/premenu.html. Those wishing to attend and to provide oral comments are asked to register in advance.

To allow for the greatest participation at the forums, we will ask you to register for a specified time and to limit your comments to 5 minutes. Those who do not preregister will be accommodated and given an opportunity to comment after those who have preregistered, time and space permitting.

Authority: 42 U.S.C. 1437f note and 3535(d).

Dated: September 15, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing.

[FR Doc. 98–25269 Filed 9–21–98; 8:45 am]

BILLING CODE 4210–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6160–9]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Oklahoma Department of Environmental Quality's (ODEQ) application and determined that its Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to approve Oklahoma's Hazardous Waste Program revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on November 23, 1998 without further notice, unless EPA receives adverse comment by October 22, 1998. Should the EPA receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, phone (405) 271–5338 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444. Written comments, referring to Docket Number OK–98–1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–264, 265, 266, 268, 270 and 279.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362), to implement its Base Hazardous Waste Management Program. Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990 (55 FR 39274), effective June 3, 1991 (56 FR 13411), effective November 19, 1991 (56 FR 47675), effective December 21, 1994 (59 FR 51116–51122), effective April 27, 1995 (60 FR 2699–2702), effective December 23, 1996 (61 FR 5288–52886), and Technical Correction effective March 14, 1997 (62 FR 12100). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993. On April 18, 1997, Oklahoma submitted a final complete program revision application for additional program approvals. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Statutory authority is provided by the Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) Supplement 1993, §§ 2–7–101 *et seq.* To implement the provisions of the EPA regulations, on January 16, 1996, the Board adopted amendments to the Hazardous Waste Management Rules (Rules), Oklahoma Administrative Code (OAC) Title 252, Chapter 200 as permanent rules. The amendments became effective July 1, 1996.

On April 4, 1996, the Council voted to recommend amendments 252:200–3–1, through 252:200–3–4 to incorporate by reference, in accordance with the *Guidelines for Adoption of Federal Regulations By Reference,* the following EPA Hazardous Waste Management Regulations as amended through July 1, 1995: The provisions of 40 CFR part 124 which are required by 40 CFR 271.14; 40 CFR parts 260–266, with exception of 40 CFR parts 260.20 through 260.22; 40 CFR part 268; 40 CFR part 270; 40 CFR part 273; and 40 CFR part 279. The Board adopted these amendments on June 18, 1996. The amendments were signed by the Governor and became effective as emergency rules on August 1, 1996. The amendments were effective as permanent rules June 1, 1997.

The EPA reviewed ODEQ's application, and today is making an immediate final decision, subject to public review and comment, that ODEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, the EPA intends to grant Final Authorization for the additional program modifications to Oklahoma. The public may submit written comments on the EPA's final decision until October 22, 1998. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of ODEQ's program revision shall become effective 60 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

The ODEQ's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR

parts 124, 260–263, 264, 265, 266, 270, 273, and 279, that were published in the FR through June 30, 1995. This approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Recovered Oil Exclusion, [59 FR 38536–38545] July 28, 1994. (Checklist 135).	Oklahoma Administrative Code (OAC) 27A Oklahoma Statutes (O.S.), Supp. 1993, §2–7–106 effective July 1, 1993; §2–7–104 effective July 1, 1994; Oklahoma Hazardous Waste Management Act (OHWMA), as amended, 252, Chapter 200 (Rules); 252:200–3–1, through 252:200–3–4, amended June 18, 1996, emergency rule effective August 1, 1996, permanent rule effective June 1, 1997; 252:200–3–5, and 252:200:3–6 adopted March 30, 1994, effective May 26, 1994.
2. Removal of the Conditional Exemption for Certain Slag Residues, [59 FR 43496–43500] August 24, 1994. (Checklist 136).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; 27A O.S. Supp. 1996 §2–7–104, §2–7–105(17), §2–7–107(A)(3), effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent rule effective June 1, 1997; 252:200–3–5, and 252:200–3–6, effective May 26, 1994.
3. Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes, [59 FR 47982–48110], September 19, 1994. (Checklist 137).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, added by Laws 1994, and §2–7–107(10), effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally adopted March 30, 1994, effective as permanent rules May 26, 1994.
4. Testing and Monitoring Activities Amendment I, [60 FR 3089–3095] January 13, 1995. (Checklist 139).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally adopted March 30, 1994, effective May 26, 1994.
5. Carbamate Production Identification and Listing of Hazardous Waste, [60 FR 7824–7859] February 9, 1995; as amended at [60 FR 19165] April 17, 1995. (Checklist 140).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, Added by Laws 1994 and §2–7–106, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally adopted March 30, 1994, effective as permanent May 26, 1994.
6. Testing and Monitoring Activities Amendment II, [60 FR 17001–17004] April 4, 1995. (Checklist 141).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally effective May 26, 1994.
7. Universal Waste: General Provisions; Specific Provisions for Batteries; Specific Provisions for Pesticides; Specific Provisions for Thermostats; Petition Provisions to Add a New Universal Waste , [60 FR 25492–25551] May 11, 1995 . (Checklists 142A, 142B, 142C, 142D & 142E).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, effective May 26, 1994.

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that ODEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, ODEQ is granted Final Authorization to operate its hazardous waste program as revised. Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize ODEQ's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

E. Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 6 of Executive Order 12866.

F. Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks", applies to any rule that: (1) the OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. The State of Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 sections 202 and 205 of the UMRA, the EPA must prepare a written statement, of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Oklahoma's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatments, storage disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

J. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

K. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1966, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

L. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

M. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a

mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 271

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

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

W.B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 98–25200 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6165–3]

Washington: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to comment and final rule.

SUMMARY: On July 7, 1998, the EPA published a proposed rule (63 FR 36652) and an immediate final rule (63 FR 36587) to approve a revision to the State of Washington hazardous waste management program which would give the program jurisdiction over "non-trust lands" within the exterior boundaries of the Puyallup Indian reservation located in Tacoma, Washington. The EPA stated in the immediate final rule that if the Agency received adverse written comment it would publish a notice withdrawing the immediate final rule before its effective date, and then would address comments in a final rule based on the proposed rule. Because EPA received an adverse comment, the Agency withdrew the immediate final rule in a withdrawal notice published on August 21, 1998 in the **Federal Register** (63 FR 44795). The EPA has reviewed and analyzed the concerns raised by the comment, and now issues this final rule. After consideration of these concerns, EPA is approving the State of Washington authorization revision to include non-trust lands within the 1873 Survey Area as part of its approved program.

DATES: This final rule will become effective on October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WCM–122, Seattle, WA 98101, Telephone: (206) 553–6502.

SUPPLEMENTARY INFORMATION:

A. Background

The State of Washington seeks revision of its authorized program to include "non-trust lands" within the exterior boundaries of the Puyallup Indian reservation (hereafter referred to as the "1873 Survey Area" or "Survey Area") pursuant to a settlement agreement finalized in 1988 and ratified by Congress in 1989, which allows Washington to seek authorization under federal environmental laws for such lands after consultation and communication with the Puyallup Tribe. The revision requested by Washington in its current application is not a result of a change to EPA's rules or regulations, nor is it a result of changes to Washington's rules and regulations. Rather, Washington's application for revision results from the unique agreements between Washington, the United States and the Puyallup Tribe of Indians. A complete discussion of the background of the matter addressed by this final rule can be found in the immediate final rule located in the final rules section of the July 7, 1998 (63 FR 36587) **Federal Register.**

B. Comment Regarding the Immediate Final Decision

Reichhold Chemical, Inc. (Reichhold), which has an EPA-issued RCRA corrective action permit for it's Tacoma facility, commented that its permit and the corrective action process should not be subjected to the jurisdictional uncertainties that it believes would result if EPA authorizes the revisions to the Washington program. Reichhold wrote that it is negotiating with the Puyallup Tribe of Indians (the Tribe) and Puyallup International, Inc. concerning the acquisition and/or long-term lease of all or a portion of the Reichhold property. Reichhold is concerned that transferring jurisdiction authority to the State for Reichhold's permit will cause delays and uncertainty should the Tribe acquire a fee or leasehold interest in the land. Reichhold did not specify what it considers to be "jurisdictional uncertainties." They claim that EPA's authorization of the Washington program will further delay Reichhold's ability to make the property available to the Tribe or any other suitable user for productive use consistent with the RCRA program and public health and safety. Reichhold requested that EPA withdraw its approval until the issues of jurisdiction over the Tribe's activities on Reichhold's property are resolved.

The EPA has reviewed the issues raised by Reichhold, and does not find sufficient merit to its objection to withhold approval of this authorization revision. Reichhold did not dispute that the State has the authority to implement the hazardous waste program on non-trust lands pursuant to the agreement and did not assert the state program fails to meet the statutory criteria of being equivalent and consistent, and providing adequate enforcement. The information Reichhold provided did not address how "jurisdictional uncertainties" will interfere with Washington's ability to properly administer the hazardous waste management program at the Reichhold facility in Tacoma.

The EPA, the State of Washington and the Puyallup Tribe already have established a process for working together to address issues of jurisdiction under the Settlement Agreement. As part of the process to revise the Washington authorization, EPA, the Tribe, and Washington consulted on implementation of the programs in a cooperative fashion, and EPA expects that the cooperation established in the Settlement Agreement and other agreements will continue to provide avenues for addressing issues that arise

in a timely and efficient manner. Specifically, the State and EPA developed an addendum to its Memorandum of Agreement (May 1998), which includes an agreed upon implementation strategy for how the EPA and Ecology will share information and communicate all jurisdictional changes within the 1873 Survey Area.

In addition, the approval in today's document specifically addresses an aspect of Reichhold's concerns by clarifying that the revised program does not extend to Indian or Indian activities within the 1873 Survey Area. EPA will retain jurisdiction over trust lands and over Indians and Indian activities on non-trust lands within the Survey Area. Should Reichhold transfer ownership of all or a portion of the facility to the Tribe, EPA and Washington, in consultation with the Tribe, will address any effects in accordance with the May 1998, State and EPA Memorandum of Agreement Addendum.

C. Today's Action

EPA is today taking final action to grant final authorization revising the State of Washington's hazardous waste program to include non-trust lands within the 1873 Survey Area of the Puyallup Indian Reservation, but limiting the authorization so that the revised program does not extend to Indian or Indian activities within the 1873 Survey Area.

Washington will implement the revised authorized program in the same manner that the program is implemented elsewhere in the State. This includes all aspects of the authorized State program such as waste designation requirements; generator, transporter, and recycling requirements; treatment, storage and disposal (TSD) facility requirements; all permitting procedures; corrective action requirements; and compliance monitoring, and enforcement procedures. EPA will continue to implement and enforce Hazardous and Solid Waste Amendments of 1984 (HSWA) provisions for which the State is not authorized.

All permits issued by U.S. EPA Region 10 on non-trust lands within the 1873 Survey Area prior to final authorization of this revision will continue to be administered by U.S. EPA Region 10 until the issuance or reissuance after modification of a State RCRA permit. Upon the effective date of the issuance, or reissuance after modification to incorporate authorized State requirements, of a State RCRA permit, those EPA-issued permit provisions which the State is authorized to administer and enforce will expire. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit.

I conclude that Washington's application for a program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted Final Authorization to operate its hazardous waste program as revised for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. Washington now has responsibility for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA and excluding from its revised program authority over Indians or Indian activities within the 1873 Survey Area. Washington also has primary enforcement responsibilities for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. EPA will retain jurisdiction over trust lands and over Indians and Indian activities on non-trust lands within the Survey Area. EPA retains the right to conduct inspections under section 3007 of RCRA, 42 U.S.C. 6927, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA, 42 U.S.C. sections 6928, 6934 and 6973.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Washington's program and for incorporation by reference of those provisions of the State's authorized statutes and regulations EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart WW, until a later date.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate or to the private sector of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program. Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. To the extent that the State's hazardous waste program is more stringent than the Federal program, any new requirements imposed on the regulated community apply by virtue of state law, not because of any new Federal requirement imposed pursuant to today's rule.

The requirements of section 203 of UMRA also do not apply today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act or any other statute, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is not required, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. Today's rule does not impose any federal requirements on regulated entities, whether large or small. Instead, today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and

Indian activities within the 1873 Survey Area. Today's rule carries out Congress' intent under both RCRA and the Settlement Act that states should be authorized to implement their own hazardous waste programs as long as those programs are equivalent to, and no less stringent than, the Federal hazardous waste program. In this case, to the extent that the State's hazardous waste program is more stringent than the Federal program, any new requirements imposed on the regulated community apply by virtue of state law, not because of any new Federal requirement imposed pursuant to today's rule.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States 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).

H. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

I. Compliance With Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not impose a mandate upon a State, local or Tribal government.

Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the Area. As such, the final rule is not subject to the requirements of Executive Order 12875.

J. Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant," as defined under Executive Order 12866, and where EPA determines the environment health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and is not a health or safety risk-based determination. Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. As such, the final rule is not subject to the requirements of Executive Order 13045.

K. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule specifically grants Washington Final Authorization to operate its hazardous waste program as revised for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. EPA will retain jurisdiction over trust lands and over Indians and Indian activities on non-trust lands within the Survey Area. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

L. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

M. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d)(15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary standards.

List of Subjects in 40 CFR Part 27

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

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

Dated: September 10, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–25321 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 510, 514, 540, 572, 585, 587 and 588

[Docket No. 98–09]

Update of Existing and Addition of New Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") is revising its existing fees for filing petitions and complaints; various public information services, such as record searches, document copying, and admissions to practice; filing freight forwarder applications; various ATFI-related services; passenger vessel performance and casualty certificate applications; and agreements. These revised fees reflect current costs to the Commission. In addition, the Commission adds three new fees for the publication of the Regulated Persons Index ("RPI") on diskette; the application to amend a passenger vessel operator's Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages ("Certificates") for the addition or substitution of a vessel to the applicant's fleet; and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract.

EFFECTIVE DATE: November 2, 1998

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, D.C. 20573–0001, (202) 523–5866, E-mail: sandrak@fmc.gov.

SUPPLEMENTARY INFORMATION: On July 1, 1998, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking ("NPR" or "Proposed Rule") in Docket No. 98–09, *Update of Existing and Addition of New Filing and Services Fees*, 63 FR 35896. No comments were received.

This rule updates the Commission's current filing and service fees which have been in effect since 1995, and are no longer representative of the Commission's actual costs for providing such services. Fee increases primarily reflect increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounts for the increase in the level of proposed fees.

The Commission is eliminating several fees. Fees associated with the provision of subscription services will be discontinued because of diminished public demand for them and because most of the information can be found on the Internet, the Commission's website, or requested from the Office of the Secretary on an *ad hoc* basis. Some fees associated with ATFI Subscriber Tapes have been eliminated in accordance with Docket No. 95–13, *Automated Tariff Filing and Information System* (60 FR 56122, November 7, 1995).

The Commission is instituting three new user fees for: The provision of the RPI on diskette, the issuance of Pub. L. 89–777 Certificates to add or substitute a vessel to the applicant's fleet, and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract under 46 CFR 514.7(k)(2). Provisions of parts 585, 587, and 588 are amended to clarify that fees governing the filing of petitions are applicable.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in the salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level of costs.

This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804(2). In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. In the NPR, the Commission stated its intention to certify this rulemaking because it is required to collect fees from the general public to recover the cost of providing certain, specific services; the proposed increases are generally *de minimis;* and in addition, its regulations provide for waiver of fees for those entities that can make the required showing of undue hardship (46 CFR 503.41). No comments were received in this proceeding. Therefore, based on the lack of comments, the *de minimis* nature of the increase, and the statutory requirement that the fees be collected, the certification is continued. This Rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal Access to Justice, Investigations, Lawyers, and Reporting and record keeping requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, and Sunshine Act.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 572

Administrative practice and procedure, Freight, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

46 CFR Part 587

Administrative practice and procedure, Maritime carriers.

46 CFR Part 588

Administrative practice and procedure, Investigations, Maritime carriers.

Pursuant to 5 U.S.C. 553, the Independent Offices Appropriations Act, 31 U.S.C. 9701, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716, the Commission is amending title 46 of the Code of Federal Regulations as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

Subpart D—Rulemaking

2. The fourth sentence of § 502.51 is revised to read as follows:

§ 502.51 Petition for issuance, amendment, or repeal of rule.

* * * Petitions shall be accompanied by remittance of a $177 filing fee.

* * * * *

Subpart E—Proceedings; Pleadings; Motions; Replies

3. Section 502.62(f) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(f) The complaint shall be accompanied by remittance of a $184 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a $177 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—general and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a $177 filing fee. [Rule 69.]

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a $184 filing fee. [Rule 182.]

Subpart U—Conciliation Service

7. The last sentence of § 502.404(a) is revised to read as follows:

§ 502.404 Procedure and fee.

(a) * * * The request shall be accompanied by remittance of a $69 service fee.

* * * * *

PART 503—PUBLIC INFORMATION:

8. The authority citation for Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

§ 503.41 [Amended]

9. In § 503.41, Policy and services available, paragraph (b)(1) is removed, and paragraphs (b)(2) and (b)(3) are redesignated as (b)(1) and (b)(2).

10. In § 503.43, the first two sentences of paragraph (a)(8), paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (e) and paragraph (g) are revised; paragraphs (d), (f) and (h) are removed; revised paragraphs (e) and (g) are redesignated paragraphs (d) and (e); and paragraph (c)(3)(iv) is added to read as follows:

§ 503.43 Fees for services.

(a) * * *

(8) *Direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act ("FOIA") request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 17.5 percent of that rate to cover benefits) and the cost of operating duplicating machinery. * * *

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $18.00 per hour and by professional/executive personnel at a rate of $35.00 per hour.

(ii) Minimum charge for record search is $18.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $70.00 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $18.00 per hour.

(iii) Minimum charge for copying is $4.50.

(iv) No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of such Commission issuances individually requested in person or by mail.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $55.00 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $8 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $86 pursuant to § 502.27 of this chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

11. In § 503.63, the introductory texts of paragraphs (b) and (c) are revised to read as follows:

§ 503.63 Request for information.

* * * * *

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

* * * * *

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include in such request the following:

* * * * *

12. In § 503.65, the introductory text of paragraph (b)(1) and paragraph (b)(2) are revised to read as follows:

§ 503.65 Request for access to records.

* * * * *

(b) * * *

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal

Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

* * * * *

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include therein a signed, notarized statement to verify his or her identity.

* * * * *

13. In § 503.67, paragraph (b)(1) is revised to read as follows:

§ 503.67 Appeals from denial of request for amendment of a record.

* * * * *

(b) * * *

(1) Be addressed to the Chairman, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573; and

* * * * *

14. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $55 for each certification.

* * * * *

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

15. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 862.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

16. Section 510.12(b) is revised to read as follows:

§ 510.12 Application for license.

(a) * * *

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $778 made payable to the *Federal Maritime Commission.*

* * * * *

17. The penultimate sentence in § 510.14(b) is revised to read as follows:

§ 510.14 Surety bond requirements.

(a) * * *

(b) * * * The fee for such supplementary investigation shall be $224 payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

18. The first sentence of § 510.19(e) is revised to read as follows:

§ 510.19 Changes in organization.

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing ("BTCL"), Federal Maritime Commission, on form FMC–18 Rev., together with a processing fee of $362, made payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

19. Section 510.26 is added to read as follows:

§ 510.26 Regulated Persons Index

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for $84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 514—TARIFFS AND SERVICE CONTRACTS

20. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart B—Service Contracts

21. Section 514.7(k)(2) introductory text is revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(k) * * *

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a $233 service fee, and shall include:

* * * * *

Subpart C—Form, Content, and Use of Tariff Data

22. In § 514.21, paragraphs (b)(1), (b)(2)(i) through (iv), (c), (e)(1), (f), (g), (i), (j)(1) and (k) are revised; paragraph (l) is removed; paragraph (m) is revised and redesignated paragraph (l); and new paragraph (m) is added to read as follows:

§ 514.21 User charges.

* * * * *

(b) *User manual* (of ATFI "Guides"—§ 514.8(b)).

(1) *In diskette form:* $39 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) * * *

(i) *Package A:* Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii) of this section: $49.00.

(ii) *Package B:* Tariff Retrieval Guide: $49.00.

(iii) *Package C:* Tariff Filing Guide: $59.00.

(iv) *Package D:* All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii) of this section: $99.00.

* * * * *

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)): $174 for initial registration for firm and one individual; $148 for additions and changes.

* * * * *

(e) *Certification of batch filing capability (by appointment through the Office of Information Resources Management)* (§ 514.8(1)).

(1) *User charge:* $496 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

* * * * *

(f) *Application for special permission* (§ 514.18): $179.

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). The fee for remote electronic access to ATFI electronic data is 33 cents for each minute of remote computer access directly to the ATFI database by any individual.

(h) * * *

(i) *Tariff filing fee.* The fee for tariff filing shall be 20 cents per filing object; the fee for filing service contract essential terms shall be $1.63 per filing set.

(j) *Daily Subscriber Data* (§ 514.20(d)).

(1) Persons requesting download of daily updates must pay 33 cents per minute as provided by § 514.21(g).

(2) * * *

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be $46 for the initial tape plus $25 for each additional tape required.

(l) *Access to ATFI data.* Official ATFI tariff data may be directly accessed by computer by:

(1) *Retrievers.* Any person may, with a proper retrieval USERID and password, enter the official ATFI database to obtain computer access of tariff matter, as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper. The user fee for this computer access is 33 cents a minute, for which the user will be billed at the end of each month.

(2) *Filers.* Any person with a proper filer USERID and password may enter the official ATFI database to obtain computer access of tariff matter as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper, and the filer ATFI-mail-file-transfer function, which prints the contents of the filer's ATFI mail on paper.

(m) *Regulated Persons Index.* The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for $84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

23. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

24. The last sentence in § 540.4(a) and the last sentence in § 540.4(b) are revised, and another sentence added to § 540.4(b) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

(a) * * *

Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,152. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,076.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

25. The last sentence in § 540.23(a) and the last sentence in § 540.23(b) are revised, and another sentence added to § 540.23(b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

(a) * * * Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $938. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $469.

* * * * *

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

26. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

Subpart D—Filing of Agreements

27. Section 572.401(f) is revised to read as follows:

§ 572.401 General requirements.

* * * * *

(f) Agreement filings for Commission action requiring an Information Form and review by the Commission shall be accompanied by remittance of a $1,666 filing fee; agreement filings for Commission action not requiring an Information Form, but requiring review by the Commission, shall be accompanied by remittance of a $841 filing fee; agreement filings reviewed under delegated authority shall be accompanied by remittance of a $391 filing fee; and agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a $131 filing fee.

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

28. The authority citation for part 585 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart C—Conditions Unfavorable to Shipping

29. Section 585.402 is revised to read as follows:

§ 585.402 Filing of Petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $177 filing fee.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

30. The authority citation for part 587 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714 and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

31. Section 587.3(a)(2) is revised to read as follows:

§ 587.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $177 filing fee.

* * * * *

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

32. The authority citation for Part 588 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

33. Section 588.4(a) is revised to read as follows:

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a $177 filing fee.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25219 Filed 9–21–98; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket 97–99; FCC 98–155]

Relocation of the Digital Electronic Message Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: With this Memorandum Opinion and Order, the Commission denies Petitions for reconsideration of the Commission's order relocating the Digital Electronic Message Service (DEMS) from the 18 GHz band to the 24 GHz band. In its decision, the Commission rejects petitioners arguments that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the under DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service. The Commission also amends Footnote US341 of the U.S. Table of Allocations to reflect the current status of relevant radionavigation facilities.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: James Taylor (202) 418–2113 of the International Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 97–99; FCC 98–155, adopted July 9, 1998 and released July 17, 1998. The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, telephone: 202–857–3800, facsimile: 202–857–3805.

Summary of Memorandum Opinion and Order

1. This *Memorandum Opinion and Order* denies petitions for reconsideration of the Commission's *Order*, FCC 97–95, 12 FCC Rcd. 4990 (1997), modifying Commission rules without public notice and comment and relocating the Digital Electronic Message Service (DEMS), a terrestrial point-to-multipoint microwave service, from the 18.82–18.92 GHz and 19.16–19.26 GHz bands (18 GHz band) to the 24 GHz band (Relocation Order).

2. In January and March 1997, the National Telecommunications and Information Agency (NTIA), acting on behalf of the Department of Defense, requested that the Commission protect military satellite communications systems operating in the 18 GHz band in the Washington, D.C. and Denver, CO areas from interference. NTIA stated that DEMS licensees could cause interference to the Government systems and that the relocation was essential to fulfill requirements for Government military systems to perform satisfactorily. To facilitate a solution to the interference problem, NTIA made 400 Megahertz of replacement spectrum available at the 24.25–24.45 GHz and 25.05–25.25 GHz bands, and suggested that the Commission expeditiously relocate DEMS without notice and comment based upon the military and good cause exemptions to the Administrative Procedure Act.

3. Petitioners argue that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the underlying DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service.

4. The Commission found that the decision to move all of DEMS from the 18 GHz to the 24 GHz band nationwide was within the scope of the military exemption to the notice and comment requirement because NTIA, on the behalf of DOD, specifically requested that the Commission protect government systems and relocate DEMS without notice and comment. The Commission found that the exemption encompasses relocation actions outside of Washington D.C. and Denver, CO. and that addressing the interference problems in those two areas alone would preclude DEMS in those areas because it is unlikely that 24 GHz equipment could be manufactured at economic prices solely for the Washington, D.C. and Denver, CO markets. Additionally, the Commission found that the good cause exemption to the APA's notice and comment requirements provides an independent source for the Commission's actions in the 18 GHz Relocation Order and that the Relocation Order includes a sufficient statement of "good cause."

5. WebCel asserts the Commission failed to address issues raised in Teledesic's withdrawn pleading, initially filed in September, 1996 but withdrawn in March 1997, concerning the status of DEMS licenses now relocated to 24 GHz pursuant to the Relocation Order. The Wireless Telecommunications Bureau, Enforcement Division, investigated the validity of the DEMS licenses issued to DSC and MSI and found no violations of DEMS construction and operating requirements.

6. When the Commission relocated DEMS from the 18 GHz band to the 24 GHz band, it allocated on a per channel basis four times the amount of spectrum at 24 GHz as was allocated at 18 GHz. Petitioners challenged this determination, arguing that the Commission's assumptions regarding

typical cell size, service reliability, transmitter power and other technical parameters were improper. The *Memorandum Opinion and Order* rejects these technical contentions. Using comparable technology, DEMS requires at least four times the amount of spectrum at 24 GHz to provide equivalent service due primarily to less favorable radio propagation characteristics.

7. The Relocation Order allocated 5 channel pairs of 40 Megahertz (400 Megahertz total) for DEMS at 24 GHz. MWCA asserts the incumbent DEMS licensees would have a de facto monopoly because the DEMS licensees have, or are requesting, virtually all of the available channel pairs in each SMSA. The *Memorandum Opinion and Order* rejects this claim, noting that the relocations did not alter the competitive status quo but simply changed the frequency bands at which DEMS operates. Further, additional channels remain to be licensed in many areas

8. Several petitioners question whether Section 309(j) of the Communications Act requires the Commission to conduct competitive bidding for the 24 GHz band. The Commission found that auctions are not required, nor in the public interest, with respect to the licenses affected by the 18 GHz Relocation Order. The DEMS licensees are previously licensed service providers forced to relocate from 18 GHz to 24 GHz. Consequently, the Commission did not grant the DEMS licensees initial licenses but instead modified existing licenses. The Commission expects to address separately, through a future notice of proposed rulemaking, the disposition by auction of unassigned DEMS spectrum at 24 GHz.

9. Finally, at the time of the Relocation Order, the only operations in the 24 GHz band in the United States were two radionavigation radar facilities operated by the Federal Aviation Administration. The facilities, located near Washington, D.C. and Newark, New Jersey, were scheduled to be decommissioned January 1, 1998 and January 1, 2000, respectively. The Relocation Order added U.S. Footnote US341 to the U.S. Table of Allocations to protect the FAA operation in these two areas until decommissioning. Consistent with this schedule, the facility in Washington, D.C. has been decommissioned and the decommissioning date for the Newark, New Jersey station has been advanced. In order to accurately reflect the current status we amend US341 to state:

> Non-Government operations in the 24.25–24.45 GHz band must provide protection to the FAA radionavigation radar facility at the Newark International Airport, New Jersey, until the facility is decommissioned. The Newark radar facility is scheduled to be decommissioned by January 1, 1998. Protection will be afforded in accordance with criteria developed by the NTIA and FCC.

Ordering Clauses

10. Accordingly, *It is ordered* that the Petitions for Reconsideration of WebCel Communications, Inc., DirecTV Enterprises, Inc. and BellSouth Corporation of the March 14, 1997 Relocation Order are denied.

11. *It is further ordered* that the Petition for Partial Reconsideration filed by the Millimeter Wave Carrier Association, Inc. is denied.

12. *It is further ordered* that the Petitions for Reconsideration of DirecTV Enterprises, Inc. and Bellsouth Corporation of the June 24, 1997 Modification Order *are denied.*

13. *It is further ordered* that the Applications for Review of WebCel Communications, Inc., and Millimeter Wave Carrier Association, Inc., of the June 24, 1997 Modification Order *are denied.*

14. *It is further ordered* that the Joint Motion for Leave to File Surreply of Digital Services Corporation, Microwave Services Inc. and Teligent, L.L.C., ET Docket No. 97–99, *is granted* and that WebCel Communications, Inc., Opposition to Joint Motion for Leave to File Surreply, ET Docket No. 97–99, *is denied.*

15. *It is further ordered* that the Motion of WinStar Communications, Inc. to withdraw its Petition for Clarification and its Reply *is granted.*

16. *It is further ordered* that Teledesic Corporation's request to withdraw its Petition to Deny and Determine Status of Licenses, File No. 9607682 et. al., *is granted.*

17. *It is further ordered* that the Motions for Expedited Resolution filed by Millimeter Wave Carrier Association, Inc. and WebCel Communications, Inc., ET Docket No. 97–99, *are dismissed.*

List of Subjects in 47 CFR Part 2

Communications equipment, Fixed service, Satellite.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

§ 2.106 [Amended]

2. Amend § 2.106 by revising the footnote following the table in US341 to read as follows:

* * * * *

US341 Non-Government operations in the 24.25–24.45 GHz band must provide protection to the FAA radionavigation radar facility at the Newark International Airport, New Jersey, until the facility is decommissioned. The Newark radar facility is scheduled to be decommissioned by January 1, 1998. Protection will be afforded in accordance with criteria developed by the NTIA and FCC.

* * * * *

[FR Doc. 98–25271 Filed 9–21–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 183
Tuesday, September 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–98–09]

Fluid Milk Promotion Program; Notice of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be held to determine whether fluid milk processors favor the continuation of the Fluid Milk Promotion Order. The National Fluid Milk Processor Board, which administers the order, requested the action. The order will remain in effect if at least 50 percent of the fluid milk processors voting in the referendum favor its continuation and those processors marketed in July 1998 at least 60 percent of the fluid milk products sold in the United States by all processors voting in the referendum.

DATES: The referendum will be held November 9–16, 1998. The representative period for establishing voter eligibility will be July 1998.

FOR FURTHER INFORMATION CONTACT: Shirley Flood, Referendum Agent, USDA/AMS/Dairy Programs, Room 2753, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9374.

SUPPLEMENTARY INFORMATION: This document announces that a referendum will be conducted on November 9–16, 1998, among fluid milk processors to determine whether the Fluid Milk Promotion Order should continue. The Order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Amendments Act of 1993 and 1996. The program is funded by a mandatory 20-cent assessment on processors whose monthly marketing exceeds 500,000 pounds of fluid milk products sold in the United States.

The Fluid Milk Promotion Order, which became effective December 10, 1993, provides that the Secretary shall conduct a continuation referendum at the request of the Board or any group of fluid milk processors which represents 10 percent or more of the fluid milk products marketed in the United States by all fluid milk processors voting in the preceding referendum. The order will remain in effect if at least 50 percent of the fluid milk processors voting in the referendum favor its continuation and those processors marketed during the representative period (as determined by the Secretary) at least 60 percent of the fluid milk products marketed in the United States by all processors voting in the referendum.

The month of July 1998 is hereby determined to be the representative period for the conduct of such referendum. Fluid milk processors who wish to participate in the referendum will have to register to vote by certifying that they were processors during the month of July 1998. Those handlers processing and marketing more than 500,000 pounds of fluid milk products during the month of July 1998 will be eligible to vote in the referendum, provided they are fluid milk processors at the time of voter registration and during the time the referendum is conducted.

It is hereby directed that a referendum be conducted during the period of November 9–16, 1998, in accordance with the procedure for the conduct of referenda (7 CFR 1160.600 *et seq.*), to determine whether the Fluid Milk Promotion Order is approved by fluid milk processors who, during the representative period, were engaged in the distribution of fluid milk products within the 48 contiguous United States and the District of Columbia.

Shirley Flood is hereby designated as the agent of the Secretary to conduct such referendum.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 6401–6417.

Dated: September 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–25214 Filed 9–21–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–29–AD]

RIN 2120–AA64

Airworthiness Directives; Puritan-Bennett Aero Systems Company C351–2000 Series Passenger Oxygen Masks and Portable Oxygen Masks

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to any aircraft equipped with Puritan-Bennett Aero Systems Company (Puritan-Bennett) C351–2000 series passenger oxygen masks and portable oxygen masks. The proposed AD would require inspecting the passenger and portable oxygen masks for tears around the face cushion adjacent to the inner mask housing, and replacing or repairing any torn passenger or portable oxygen mask. Reports received from three airplane manufacturers of defective oxygen masks prompted the proposed action. The actions specified by the proposed AD are intended to prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury.

DATES: Comments must be received on or before November 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from

Puritan-Bennett Aero Systems Co., 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: (913) 338–9800; facsimile: (913) 338–7353. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Michael Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4147; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–29–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Three airplane manufacturers found and reported to the FAA that, during routine inspections, tears were found in the face cushion of Puritan-Bennett C351–2000 series passenger and portable masks. These tears were ¼-inch to 1-inch long. Pulling on the face cushion after deployment could result in the face cushion tearing away from the mask housing. The tear in the face cushion could also lead to oxygen leakage, and insufficient oxygen delivery to the passengers. The masks in question have elastomer cure dates between September 1993 and March 1997.

Relevant Service Information

Puritan-Bennett has issued Nellcor Puritan Bennett Service Bulletin No. C351–2000–35–1, Revision 2, date of original issue: July, 1996, date of first revision: February, 1997, date of current revision: February, 1998. This service bulletin specifies procedures for inspecting any Puritan-Bennett C351–2000 series passenger oxygen mask for tears in the face cushion. If any tear is found, the service bulletin specifies procedures for replacing or repairing the oxygen mask.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the information described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in aircraft that are equipped with Puritan-Bennett C351–2000 series passenger oxygen masks and portable oxygen masks having elastomer cure dates between September 1993 and March 1997, the FAA is proposing AD action. The proposed AD would require inspecting the oxygen mask face cushion adjacent to the inner mask housing for any tear. If a tear is found, the proposed AD would require replacing or repairing the passenger or portable oxygen mask with one that has an elastomer cure date later than March 1997.

Compliance Time

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the use of these oxygen masks is not related to hours time-in-service. The unsafe condition exists regardless of whether the aircraft is in operation. Therefore, to ensure that the above-referenced condition is corrected within a reasonable period of time, a compliance schedule based upon calendar time instead of hours TIS is proposed.

Cost Impact

The FAA estimates that 10,500 oxygen masks would be affected by the proposed AD, that it would take approximately 1 workhour per aircraft to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Puritan-Bennett will repair or replace oxygen mask assemblies found defective at no cost to the owner/operator of any affected aircraft. Based on these figures, the total cost impact of the proposed inspection is estimated to be $630,000.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 a new airworthiness directive (AD) to read as follows:

Puritan-Bennett Aero Systems Company

Docket No. 98–CE–29–AD

Applicability: Puritan-Bennett C351–2000 series passenger oxygen masks and portable oxygen masks, part numbers as listed below, that (1) have elastomer cure dates between September 1993 and March 1997; and (2) are installed in aircraft that are certificated in any category:

Passenger Masks

C351–2000–00
C351–2000–02
C351–2000–21
C351–2000–38
C351–2000–52
C351–2000–59
C351–2000–63
114006–01
174006–16
174006–30
174006–31
174290–21
174290–22
174290–24
174290–26
174291–21
174291–23
174291–24
174501–00
174504–01 (C351–2000–205)
174505–01 (C351–2000–201)
174506–00 (C351–2000–223)
174509–00 (C351–2000–302)
174510–01 (C351–2000–224)
174510–08 (C351–2000–231)
174510–09 (C351–2000–232)
174510–10 (C351–2000–233)
174510–11 (C351–2000–234)

Drop-Out Box Assemblies

115055–04
115055–10
175011–01
175015–00
175016–00
175105–00
175109–00
175112–10
175112–11
175112–21
175112–90
175205–00
175210–00
175215–01
175222–11
175222–13
175222–20
175222–21
175222–90
175224–00
175242–00
175242–01
175242–02
175303–00
175308–00

Emergency Oxygen Portable Assemblies

176960–13
176960–14
176980–00
176965–SMB2
176965–SCOB2
176965–SMO2
176965–SCMB2

Note 1: This AD applies to each aircraft equipped with an oxygen mask 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 aircraft 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 in the body of this AD, unless already accomplished.

To prevent reduced oxygen consumption when passengers are required to use defective oxygen masks, which could result in passenger injury, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the passenger or portable oxygen masks for any tear in the face cushion in accordance with the Accomplishment Instructions section in Nellcor Puritan Bennett Service Bulletin No. C351–2000–35–1, Revision 2, date of original issue: July, 1996, date of first revision: February, 1997, date of current revision: February, 1998. The face cushion is adjacent to the inner mask housing. If a tear is found, prior to further flight, replace or repair the mask in accordance with the service bulletin.

(b) As of the effective date of this AD, no person may install, in any aircraft, Puritan-Bennett C351–2000 series passenger oxygen masks and portable oxygen masks that are specified in the Applicability section of this AD unless they have been inspected and found airworthy in accordance with paragraph (a) of this AD.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Puritan-Bennett Aero Systems Co., 10800 Pflumm Road, Lenexa, Kansas 66215; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 15, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25216 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of establishment of the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee, and notice of first meeting.

SUMMARY: The Department of Labor (Department) is establishing the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA). The Committee will meet for the first time on Monday, October 26 through Tuesday, October 27, 1998. The Committee will develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" under section 3(40) of ERISA, and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or

arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. Arrangements that are sponsored by an entity that adopts the guise of a labor organization and purports to enter into collective bargaining for the purpose of offering or providing health coverage only, with no current or prospective intention of dealing with other subjects of collective bargaining, are outside the scope of this rulemaking. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

If adopted, the proposed rule would affect employee welfare benefit plans, their sponsors, participants and beneficiaries, as well as service providers to plans, plan fiduciaries, unions, employer organizations, the insurance industry, and state insurance regulators.

DATES: The first meeting of the Committee will be held on Monday, October 26 through Tuesday, October 27, 1998 from 9:00 a.m. to approximately 5:00 p.m. on each day. The date, location and time for subsequent Committee meetings will be announced in the **Federal Register**.

ADDRESSES: The first Committee meeting will be held in Room C–5320, Seminar Room 6, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. These are not toll-free numbers. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC, Telephone (202) 219–8771. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1998, PWBA published a notice of intent to establish a negotiated rulemaking advisory committee to develop a proposed rule implementing section 3(40) of ERISA. (63 FR 18345) (Notice of Intent). Further information on the role of the Committee and the scope of the proposed rule can be found in the Notice of Intent.

In the Notice of Intent, PWBA requested comments on the appropriateness of negotiated rulemaking for the proposed rules. The Department received twelve comments, all supporting the Department's planned use of negotiated rulemaking for developing this rule. These twelve comments included 6 applications for membership and 3 nominations for membership on the Committee. Based on this response, and for the reasons stated in the Notice of Intent, the Department has determined that establishing this Committee is necessary and in the public interest.

In accordance with the FACA, PWBA prepared a Charter for the establishment of the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and the Secretary approved the Charter.

II. Committee Membership

1. Applications and Nominations

In the Notice of Intent, the Department proposed the AFL–CIO to represent the interests of labor organizations and participants and beneficiaries covered by collectively bargained plans. It nominated the National Coordinating Committee for Multiemployer Plans (NCCMP) to represent the interests of plans covering the employees of more than one employer that are subject to collective bargaining, and the National Association of Insurance Commissioners (NAIC) to represent states that regulate multiple employer welfare arrangements. The Department also included the Entertainment Industry Multiemployer Health Plans because according to its comment on the Department's 1995 Notice of Proposed Rulemaking, entertainment industry multiemployer plans are structured differently than other multiemployer welfare plans because of the special nature of the entertainment industry.

In response to the Notice of Intent, ten additional groups applied for membership on the Committee. The National Railway Labor Conference (NRLC) nominated a representative for membership on the Committee. Because collective bargaining for MEWAs for the railway industry is covered by the Railway Labor Act, and not the National Labor Relations Act, the Department believes that the interests of the NRLC are sufficiently different from those of the existing Committee members, and so accepts the NRLC for membership on the Committee. In addition, the Department accepts the application of the National Association of Health Underwriters (NAHU), which represents the interests of independent agents, brokers and advisors providing health care products and services to plans and individuals, for Committee membership, because these interests are not already directly represented by the organizations proposed by the Department. The Department also accepts the application of the Health Insurance Association of America (HIAA), which represents the interests of insurance carriers and managed care companies that finance and deliver health care, because the perspective of insurance carriers and managed care companies within the American private health care system is not already represented by the other organizations proposed by the Department.

The Department received an application for membership from The International Corporation (TIC), a third-party administrator of multiemployer plans; this application for membership was supported by a nomination of TIC by the Society of Professional Benefits Administrators. Because the interests of third-party administrators who may be responsible for implementing the requirements of any regulation resulting from the negotiated rulemaking process are not already represented, the Department accepts TIC for membership on the Committee. Likewise, because the interests of employers participating in the collective bargaining process for multiemployer welfare plans are not already represented, the Department accepts the Associated General

Contractors of America (AGC) for membership on the Committee to represent the interests of employers involved in the collective bargaining process.

The Department does not accept for membership five applicants whose interests are already adequately represented. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada have interests similar to those represented by the AFL–CIO and the NCCMP. Similarly, because the distinct interests of maritime supervisory officers are already represented by the AFL–CIO, which includes maritime unions in its membership, the Department does not accept the application of the American Maritime Officers Plans. Likewise, the Department does not accept the application for membership of the National Conference of Unions and Employee Benefit Funds (NCUEBF). In its application for membership, the NCUEBF indicated that it represents self-insured, self-administered and self-funded employee benefit plans, and has an interest in any definition of "associate member" that may be included in the regulation. The AFL–CIO's and NCCMP's interests subsume the interests of the types of plans identified by NCUEBF. The comments received by these three organizations in response to the Department's 1995 Notice of Proposed Rulemaking identified the same concerns, and the AFL–CIO and NCCMP represent a broader range of interests than does NCUEBF.

Finally, the Department does not accept the applications of the National Rural Electric Cooperative Association (NRECA) and the Legal Defense Fund of the Peace Officers' Research Association of California (PORAC). Section 3(40)(A)(ii) of ERISA, 29 U.S.C. § 1002(40)(A)(ii) provides a separate statutory exception for multiple employer plans established by rural electric cooperatives. The issues regarding whether a plan is "established or maintained under or pursuant to a collective bargaining agreement" do not apply to whether a plan is established by a rural electric cooperative. The PORAC legal defense fund represents funds that are established only by employee organizations, and does not represent collectively bargained plans or any other entities that have an interest in this rulemaking. Because the provisions of section 3(40) do not apply to PORAC or to the interests it represents, the Department does not accept its application for membership.

2. Committee Membership

Accordingly, the members of the Committee are PWBA, the NAIC, the AFL–CIO, the NCCMP, the Entertainment Industry Multiemployer Health Plans, the NLRC, TIC, NAHU, the HIAA and the AGC. These Committee members include representatives from interests that are likely to be affected by the proposed rule, including employee welfare benefit plans, their sponsors, participants and beneficiaries, service providers to plans, plan fiduciaries, unions, employer organizations, the insurance industry, and state insurance regulators. The following is the list of individual Committee members, and the interests they represent:

Labor Unions

Kathy Krieger, American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)

Multiemployer Plans

Gerald Feder (James Ray—alternate), National Coordinating Committee for Multiemployer Plans (NCCMP)
Judith Mazo, Entertainment Industry Multiemployer Health Plans

Railway Labor Organization Plans

Benjamin W. Boley, National Railway Labor Conference

Third-Party Administrators

David Livingston, Ph.D., The International Corporation

Employers/Management

James Kernan, The Associated General Contractors of America (AGC)

Independent Agents, Brokers and Advisors Providing Health Care Products and Services to Plans and Individuals

Nancy Trenti, National Association of Health Underwriters

Insurance Carriers and Managed Care Companies That Finance and Deliver Health Care

R. Lucia Riddle, Health Insurance Association of America

Federal Government

Elizabeth A. Goodman, Pension and Welfare Benefits Administration

State Governments

National Association of Insurance Commissioners

III. First Meeting of Committee

The first meeting of the Committee will be held on Monday, October 26 through Tuesday, October 27, 1998 from 9:00 a.m. to approximately 5:00 p.m. on each day in Room C–5320, Seminar Room 6, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The primary purpose of the first meeting will be to establish Committee procedures. This meeting is open to the public. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. These are not toll-free numbers.

Minutes of the public meetings and materials prepared for the Committee will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments should be directed to the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC, Telephone (202) 219–8771.

IV. Authority

This document was prepared under the direction of Meredith Miller, Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 et seq.; Section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. 2; and section 3(40) of ERISA (Pub. L. 97–473, 96 Stat. 2611. 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA, and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 16th day of September, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 98–25265 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6161–1]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Oklahoma Department of Environment Quality's (ODEQ) Resource Conservation and Recovery Act. Cluster V Hazardous Waste Program final authorization revisions. In the rules section of this **Federal Register** (FR), the EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 22, 1998.

ADDRESSES: Written comments referring to Docket Number OK98–2 may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, 73117–1212, Phone number: (405) 271–5338.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

W.B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 98–25201 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 442 FRL–6166–7]

Extension of Comment Period for Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category. The proposed rule was published in the **Federal Register** on June 25, 1998. The comment period for the proposed rule is extended 30 days, ending on October 23, 1998. This extension is being granted while taking into consideration the court-ordered promulgation date.

DATES: Comments regarding all issues related to the proposed rule will be accepted until October 23, 1998.

ADDRESSES: Send written comments and supporting data on this proposal to: John Tinger, US EPA, (4303), 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. John Tinger at (202) 260–4992. For additional economic information contact Mr. George Denning at (202) 260–7374.

SUPPLEMENTARY INFORMATION: On June 25, 1998, EPA published proposed Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category in the **Federal Register** for review and comment (63 FR 34685). The comment period was scheduled to end September 23, 1998.

EPA held a public hearing on August 18, 1998, to provide opportunities for the regulated community and other interested parties to comment on issues pertaining to the proposed rule. EPA has received several requests to extend the comment period to allow more time to address the issues on which EPA solicited public comment. EPA is scheduled to promulgate standards for this industry by June 2000. EPA is using its best efforts to comply with this deadline and expects to meet the schedule even with this extension of the comment period.

Dated: September 14, 1998.

J. Charles Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 98–25289 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, 414, 415, 424, and 485

[HCFA–1006–CN]

RIN 0938–AI52

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1999; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on June 5, 1998, entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1999."

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786–4498.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98–14650 of June 5, 1998 (63 FR 30818), there were a number of technical errors. The errors relate to a typographical error, an inconsistency in the discussion of the same issue in two sections of the preamble, erroneous descriptions of two CPT codes in Table 2, and the reversal of CPEP data for supplies and equipment for six CPT codes in Table 4. We also printed incorrect information, due to an error in the mapping program, for certain procedure codes in Addendum C, beginning on page 30902. The corrections appear in this document under the heading "Correction of Errors."

Correction of Errors

In FR Doc. 98–14650 of June 5, 1998, make the following corrections:

Page 30832. In the first column, in line 10, the phrase "calculated in Step 2." is corrected to read: "calculated in Step 1."

Pages 30839 through 30840. The two sentences in column 3, in the second full paragraph, beginning in the ninth line from the bottom of the page and continuing on to the top of page 30840, indicate that a skilled nursing facility (SNF) is to be considered as a physician's office for the purposes of applying the higher of the two practice expense RVUs. These sentences are in conflict with a statement on page 30835 that says that the SNF is a facility for the purposes of applying the RVUs. The sentences on pages 30839 through 30840 are in error. The corrected sentences on pages 30839 through 30840 should read:

"The lower practice expense RVUs would apply to services furnished to hospital, ambulatory surgical center, or skilled nursing facility patients. The higher practice expense RVUs would apply to services furnished in a physician's office or services other than visits but performed in a patient's home and services furnished in a nursing facility, or in an institution other than a hospital, ambulatory surgical center, or skilled nursing facility."

Page 30892. In the example in Table 2, the description of the following two codes is corrected to read as follows:

CPT code	Description
44140	Partial removal of colon.
45330	Sigmoidoscopy, diagnostic.

Page 30894. In the example in Table 4, the CPEP data for supplies and equipment were reversed. These data for the following six codes are corrected to read as follows:

	CPEP facility data			CPEP nonfacility data		
	Clinical	Supplies	Equipment	Clinical	Supplies	Equipment
35301	$144.94	$13.97	$1.04	.....	.....	.....
44140	188.13	12.74	1.21	.....	.....	.....
45330	4.76	0.00	0.00	$28.85	$116.12	$5.47
56340	96.30	8.68	0.86	.....	.....	.....
99213	8.15	0.00	0.00	16.43	2.85	0.77
99232	3.72	0.00	0.00	.....	.....	.....

Page 30902. The facility practice expense RVU and the facility total RVU for CPT code 10040, Acne surgery of skin abscess, are corrected to read as follows:

CPT [1]/HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Facility practice expense RVUs	Malpractice RVUs	Non-facility total	Facility total	Global
10040	.....	A	Acne surgery of skin abscess	1.18	1.47	0.73	0.03	2.68	1.94	010

[1] CPT codes and descriptions only are copyright 1997 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.

Page 31007.

1. The following codes in Addendum C are corrected to read as follows:

CPT [1]/HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Facility practice expense RVUs	Malpractice RVUs	Non-facility total	Facility total	Global
•	•	•	•		•		•		•	
G0101	.....	A	CA screen; pelvic/breast exam	0.45	0.45	0.28	0.02	0.92	0.75	XXX
G0104	.....	A	CA screen; flexi sigmoidscope	0.96	3.42	0.38	0.12	4.50	1.46	000
G0105	.....	A	Colorectal scrn; hi risk ind	3.70	4.37	1.74	0.39	8.46	5.83	000
•	•	•	•		•		•		•	
G0121	.....	N	Colon ca scrn; barium enema ..	+3.70	4.37	1.74	0.39	8.46	5.83	XXX
•	•	•	•		•		•		•	
G0127	.....	R	Trim nail (s)	0.11	0.16	0.05	0.02	0.29	0.18	000
•	•	•	•		•		•		•	

[1] CPT codes and descriptions only are copyright 1997 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.

2. There are technical errors in the data published for HCPCS code R0070, Transport portable x-ray, and HCPCS code R0075. The correct data are as follows:

CPT/HCPS[2]	MOD	Status	Description	Physician work RVSs[3]	Non-facility practice expense RVUs	Facility practice expense RVUs	Malpractice RVUs	Non-facility total	Facility total	Global
*	*		* *	*		*		*		
R0070		A	Transport portable x-ray	0.00	1.65	1.65	0.01	1.66	1.66	XXX
R0075		A	Transport port x-ray multipl	0.00	0.69	0.69	0.01	0.70	0.70	XXX
*	*		* *	*		*		*		

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] +Indicates RVUs are not used for Medicare payment.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 11, 1998.

Thomas F. Joyce,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–24992 Filed 9–21–98; 8:45 am]

BILLING CODE 4120–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 91–313, DA 98–1808]

International Standards for ISM Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination.

SUMMARY: This action terminates the "International Standards for ISM Equipment" proceeding. The Commission initiated this proceeding to solicit information from interested parties to assist the Commission in shaping its position on international standards to control radio noise generated by Industrial, Scientific, and Medical (ISM) equipment.

EFFECTIVE DATE: September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls , Office of Engineering and Technology, (202) 418–2454.

SUPPLEMENTARY INFORMATION: In ET Docket 91–313, DA 98–1808, the Commission adopted and released an *Order* on September 15, 1998, terminating this proceeding. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Order

1. On October 22, 1991, the Commission issued a *Notice of Inquiry* ("NOI"), 56 FR 58863, (November 22, 1991), 6 FCC Rcd 6501 (1991), to solicit information from interested parties to assist the Commission in shaping its position on international standards to control radio noise generated by Industrial, Scientific, and Medical (ISM) equipment. We also sought information about the desirability and feasibility of harmonizing part 18 of the FCC rules with the international standards for ISM equipment.

2. Comments received in response to the NOI overwhelmingly opposed any changes to the ISM rules. We do not contemplate any general changes to the ISM rules at this time. Therefore, we are terminating this proceeding. Specific issues concerning the ISM rules are being addressed in separate proceedings.

3. Accordingly, it is ordered, that this proceeding, ET Docket No. 91–313, is terminated. This action is taken pursuant to authority in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303; and pursuant to §§ 0.31 and 0.241 of the Commission's Rules, 47 CFR 0.31, 0.241.

List of Subjects in 47 CFR Part 18

Medical devices, Scientific equipment.

Federal Communications Commission.

Dale N. Hatfield,

Chief, Office of Engineering and Technology.

[FR Doc. 98–25221 Filed 9–21–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE43

Endangered and Threatened Wildlife and Plants; Proposed Determination of Threatened Status for the Koala

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition finding.

SUMMARY: The Service proposes to determine threatened status for the Australian koala. The eucalyptus forest and woodland ecosystem, on which this arboreal marsupial depends, has been reduced by more than half and is continuing to deteriorate. The species also is threatened by habitat fragmentation and consequent potential loss of genetic viability, disease, and various other factors. The Service seeks relevant data and comments from the public. This proposal incorporates a finding that a petition requesting the listing of the koala is warranted. This proposal, if made final, would extend the Act's protection to this species.

DATES: Comments must be received by December 21, 1998. Public hearing requests must be received by November 6, 1998.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203 (fax 703–358–2276). Comments and materials received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The koala (*Phascolarctos cinereus*) is a bearlike arboreal mammal of Australia. It has a compact body, large head and nose, large and furry ears, powerful limbs, and no significant tail; weight is about 4–15 kilograms (10–35 pounds). The koala is a marsupial, being more closely related to kangaroos and possums than to true bears and other placental mammals; its young is carried in a pouch for about 6 months. It occurs mainly in the forests and woodlands of central and eastern Queensland, eastern New South Wales, Victoria, and southeastern South Australia.

In a petition dated May 3, 1994, and received by the U.S. Fish and Wildlife Service (Service) on May 5, 1994, Australians for Animals (in Australia) and the Fund for Animals (in the United States) requested that the koala be classified as endangered in New South Wales and Victoria, and as threatened in Queensland. About 40 organizations in the United States and Australia were named as supporting the petition. The document was accompanied by extensive data indicating that the koala has declined dramatically since European settlement of Australia began about 200 years ago and has lost more than half of its natural habitat because of human activity. Once numbering in the millions, it was intensively hunted for its fur up through the 1920s. It is totally dependent for food and shelter on certain types of trees within forests and woodlands. The destruction or degradation of this habitat would reduce the viability of populations, even if the animals were otherwise protected.

In the **Federal Register** of October 4, 1994 (59 FR 50557–50558), the Service announced the 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted. That notice also initiated a status review of the koala. In the **Federal Register** of February 15, 1995 (60 FR 8620), the comment period on the status review was reopened until April 1, 1995. A telegram was sent to the U.S. embassy in Australia, asking that appropriate authorities be notified and asked to comment. Notice of the review also was provided directly to numerous concerned organizations and authorities. Of the approximately 400 responses received, the great majority were brief messages in support of listing, but there also were several from persons or organizations providing substantive comments based on first-hand familiarity with the situation.

Mr. Peter Bridgewater, Chief Executive Officer of the Australian Nature Conservation Agency (this government entity, formerly the Australian National Parks and Wildlife Service, is now referred to as Biodiverstiy Group within Environment Australia), expressed opposition to the addition of the koala to the U.S. List of Endangered and Threatened Wildlife. He noted that the species had not been classified pursuant to Australia's own Federal Endangered Species Protection Act, that it is protected by the legislation of the states in which it occurs, that it is not involved in trade and its exportation is strictly limited, and that a task force is being established to review progress of koala management programs and promote greater national coordination of koala conservation. He did not think that a U.S. listing would be of any benefit to the species. He did not discuss the issue of long-term habitat loss and fragmentation, but did submit a document (Phillips 1990) from his agency covering that and other problems.

Mr. Allan Holmes, Director, Natural Resources Group, South Australia Department of Environment and Natural Resources, also opposed U.S. listing. He indicated that, while there has been some adverse habitat modification, introduction programs have actually resulted in a greater range for the koala in South Australia now than prior to European settlement.

Ms. Joan M. Dixon, a member of the Australasian Marsupial and Monotreme Specialist Group of the World Conservation Union Species Survival Commission (IUCN/SSC), stated that while various koala populations are experiencing problems, the species in general does not warrant U.S. classification.

Dr. Roger Martin of Monash University, a wildlife biologist with extensive field experience on the koala, urged rejection of the petition. He considered that strenuous conservation efforts have led to a recovery of the species in Victoria, with populations far more abundant than suggested by the petition. Large and thriving colonies were reported to exist at several closely monitored study sites in Victoria. Some observations also suggested much larger populations in Queensland than had been previously indicated.

Dr. Kath Handasyde of the University of Melbourne, another biologist with considerable field and writing experience regarding the koala, essentially supported the comments of Dr. Martin and opposed listing of the species.

Dr. Greg Gordon, a zoologist who has long been involved in koala research and conservation in Queensland, commented that the koala is still relatively numerous in some areas and probably would not qualify at present for classification as endangered or vulnerable by the World Conservation Union (IUCN), but is declining slowly because of habitat deterioration and, if suitable conservation measures are not undertaken, probably would become vulnerable in the future.

The original petitioners, Australians for Animals and the U.S. Fund for Animals, submitted extensive new comments concentrating on long-term environmental problems. There was emphasis on the international woodchip market, which was said to target the eucalyptus forests that are the primary habitat of the koala. Logging for that purpose, together with clearance for agriculture and development, evidently is proceeding throughout the general range of the koala and is even intensifying in some areas.

Ms. Deborah Tabart, Executive Director of the Australian Koala Foundation, which has funded koala research and conservation for the past decade, supported the petition and provided some rather low population estimates for the species.

Mr. Michael Kennedy, Director of the Humane Society International (Australia) and also Secretary of the IUCN/SSC Australasian Marsupial and Monotreme Specialist Group and Compiler of the Groups's *Action Plan* (Kennedy 1992), provided a summary of authoritative assessments of the status of the koala over the years suggesting that conditions are steadily deteriorating, especially because of habitat loss. He considered the requested action to be fully justified on biological grounds and that it may contribute significantly to the conservation of the species.

Dr. Carmi G. Penny, Curator of Mammals for the Zoological Society of San Diego, which keeps a captive koala colony and maintains the North American regional studbook for the species, and which also has participated in associated field work in Australia, supported the petition, but indicated that listing may not have a strong influence in Australia. Dr. Penny noted that the range states must protect suitable habitat if the species is to remain viable in the wild.

Ms. Celia Karp of the Logan City Council, Queensland, supported the petition, as based on the perspective of rapid urban growth in her area.

Dr. Miles Roberts and Dr. Michael Hutchins, Co-Chairs of the Marsupial and Monotreme Advisory Group of the American Zoo and Aquarium Association, supported listing because

of numerous problems confronting the koala. They expressed the belief that koala populations have been decimated and fractionated to the point where the long-term survival of the species in the wild would be in question even if the problems were removed immediately.

Section 4(b)(3) of the Endangered Species Act of 1973 (Act), as amended, requires that, within 12 months of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the requested action is warranted, not warranted, or warranted but precluded from immediate proposal by other pending listing measures of higher priority. Such finding is to be promptly published.

The Service has examined the data submitted by the petitioners and has consulted other authorities and available information. This review leads the Service to make the finding, hereby incorporated and published in this proposal, that the requested action is warranted, though the Service proposes to implement the action in a somewhat modified manner. Rather than divide the classification of the koala by state, as called for in the petition, the Service is proposing simply to classify the entire species as threatened. Other than the likelihood that Queensland still has a substantially larger area of koala habitat than do New South Wales and Victoria, there seems little substantive difference in the kinds of problems confronting the species. The Service's proposed approach also would avoid omitting coverage of the koala in South Australia, as well as of captive and introduced populations. However, it is emphasized that this issue remains open, that pertinent new information received during the comment period will be carefully reviewed, and that any final rule resulting from this proposal may classify the koala, or certain populations thereof, as endangered, may exclude certain populations from any classification, or may result in withdrawal of the proposal.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the following five factors described in section 4(a)(1). These factors and their application to the koala (*Phascolarctos cinereus*) are as follows:

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

The known historical range of the koala covered an extensive band of forest and woodland in eastern and central Queensland, eastern New South Wales, most of Victoria, and extreme southeastern South Australia. Within this zone, the species evidently depended mainly on suitable tracts of certain kinds of medium-to-large eucalyptus trees for food and shelter. There is a high degree of specialization for feeding on particular species of eucalyptus, and populations tend to be concentrated at certain favorable sites. The reproductive rate is relatively low, not more than one young being produced annually per female. Maturity may require several years and many of the young then are forced to disperse.

With human disruption of suitable eucalyptus forests and woodlands, there now seems little doubt that the koala has disappeared from much of its original range. In designating the koala as "potentially vulnerable," the IUCN/SSC Australasian Marsupial and Monotreme Specialist Group noted that the geographic range of the species had declined by 50 to 90 percent (Kennedy 1992).

A publication of the Australian Nature Conservation Agency (Phillips 1990), submitted both by the petitioners and Mr. Bridgewater, contains the following statement: "The expansive forests where koalas once lived * * * have largely gone and those which remain are rapidly disappearing to make way for the needs of human society." The publication cited a 1984 report by the Australian Commonwealth Scientific and Industrial Research Organization (CSIRO) indicating that the total area of medium-to-tall trees in the four states inhabited by the koala is estimated to originally have been just over 1,230,000 square kilometers (km²) (475,000 square miles (mi²)), but that just over half of those forests, 670,000 km² (259,000 mi²), had been removed or severely modified.

The petitioners provided additional details on the extent of habitat loss and modification. This problem, as caused mainly by commercial logging, clearing for agriculture and urbanization, and disease and extensive dieback (of the trees on which the koala depends) associated with direct modification, was considered to be the greatest threat to the species. The problem involves not only removal of the large eucalyptus trees used for food and shelter, but also elimination of vegetated dispersal routes, erosion, siltation of water sources, fragmentation through development of road networks, and other factors detrimental to maintenance of viable koala populations. Based on data compiled in the same 1984 CSIRO report cited above, the petitioners calculated the loss of forest during the past 200 years at 43–52 percent in Queensland, 60–80 percent in New South Wales, 59–75 percent in Victoria, and 79–100 percent in South Australia. An additional government report in 1992 estimated that 60 percent of the remaining forests in Australia are composed of eucalyptus, but that only 18 percent of these areas are unmodified by logging.

Subsequent to receipt of the petition, two new pertinent reports were issued by the Australian Department of the Environment, Sport and Territories (Glanznig 1995; Graetz, Wilson, and Campbell 1995). These documents indicate that the primary kinds of habitat utilized by the koala originally covered as much as 1,400,000 km² (540,000 mi²), but that about 890,000 km² (340,000 mi²), or approximately 63 percent, now has been cleared or thinned. Those figures, as well as others of original and remaining habitat, are probably excessive, as the koala was not uniformly distributed throughout the involved region and tended to concentrate in certain favorable areas.

In any case, the new reports support the percentages of forest loss cited above for each of the states involved. Perhaps most significantly, such land clearance is not a phenomenon of the past but is continuing and even intensifying. The estimated annual average amount of land cleared in Queensland, New South Wales, and Victoria from 1983 to 1993 was approximately 4,600 km² (1,800 mi²). Estimates for some recent years are approximately twice as great. As an illustration of the intensity of this process in Australia, Glanznig (1995) pointed out that, in 1990, the amount of native vegetation cleared in the country was more than half that cleared in Brazilian Amazonia.

Not all of the clearing in Queensland, New South Wales, and Victoria is in koala habitat and some of it involves reclearing of secondary growth; nonetheless, a 1993 estimate cited by the petitioners indicates that if the current rate of deforestation continues, Australia's forests would be eliminated in less than 250 years. Much of the forest loss is associated with the production of woodchips, mainly for exportation to paper mills in Japan.

The actual number of koalas, or of any potentially endangered species, that may have been present at various times in the past and that may still exist, is of

much interest and helps to give some perspective, but may not be a critical factor in the over-all issue. A low figure may reflect natural rarity of a population in marginal habitat. A very high figure may be meaningless if the entire habitat of the involved population faces imminent destruction. In any event, there is much uncertainty about both historical and current koala numbers. Based on the sources cited, populations may have fluctuated considerably down through the 19th century in association with such factors as disease and the intensity of aboriginal hunting. It does seem evident, however, that in the early 20th century the number of koalas in Australia was well into the millions. Such a figure is based on koalas killed for the commercial fur market during that period. In some years, the number of koalas taken may have exceeded 2,000,000 and as late as 1927, 600,000 to 1,000,000 were killed in Queensland alone. This destruction, possibly along with an epidemic (Phillips 1990), may have reduced koala numbers to just a few thousand. Subsequent conservation efforts, termination of the fur trade, and reintroduction apparently led to a partial recovery in range and numbers by the mid-20th century.

Neither the petitioners nor the Australian Nature Conservation Agency (Phillips 1990) attempted to provide a total estimate of current koala numbers in Australia. Other parties have suggested over-all numbers ranging from about 40,000 to 400,000, with the Australian Koala Foundation supporting the lower figure. In their comments on the petition, Drs. Martin and Handasyde indicated that there probably are tens of thousands of koalas at each of several study sites in Victoria alone. Dr. Martin and Ms. Tabart of the Australian Koala Foundation were able to review some of the information submitted by each other and neither accepts the other's conclusions. In his comments, Dr. Gordon developed what he considers to be a very conservative estimate of about 300,000, though he also noted that a slow decline is in progress.

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

As indicated above, koalas were devastated by the commercial fur trade in the early 20th century. This problem is no longer of immediate concern. Although some koalas reportedly are illegally hunted, overutilization is not considered as a factor threatening the survival of the species.

C. Disease or Predation.

There has been much recent concern about the effects of the bacterium Chlamydia on the koala. This disease-causing organism may manifest itself in several ways, but especially through infections of the eyes and urinary tract. It apparently has long been associated with the koala and may have been responsible for devastating epidemics in the late 19th and early 20th centuries (Phillips 1990). Information from both the petitioners and the Australian Nature Conservation Agency (Phillips 1990) indicates that the adverse effects of the disease are intensified through the stress caused by habitat loss and fragmentation. *Chlamydia* is widespread in mainland koala populations and evidently has been responsible for recent declines at some localities, but is not claimed to be an immediate threat to the over-all survival of the species. The koala is also subject to various other diseases and to predation and harassment by domestic dogs and other introduced animals.

D. The Inadequacy of Existing Regulatory Mechanisms.

Although State laws generally protect the koala from direct taking and commercial utilization, much of the petitioners' argument is based on a lack of regulatory mechanisms that adequately protect the habitat of the species. Much of the koala's remaining habitat is on government land, but such ownership does not preclude logging and other modification. There is particular concern that deforestation for the woodchip market is proceeding without proper assessment of environmental impacts. Even if such impacts were taken into account, the petitioners argue the welfare of the koala would not be given adequate attention because the species, as noted in the comment from Mr. Bridgewater, is not listed pursuant to Australia's Federal Endangered Species Protection Act. The koala, however, is classified as a "vulnerable and rare species" on "Schedule 12—Endangered Fauna," issued pursuant to the National Parks and Wildlife Act of New South Wales.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

The petition and other sources indicate a number of additional problems confronting the koala. Perhaps most importantly from a long-term perspective is a loss of genetic viability resulting both from fragmentation of habitat, which leads to inbreeding of the isolated animals remaining therein, and descent of many of the existing populations from colonies that were maintained in a semi-natural environment on offshore islands. Lack of genetic variability could increase susceptibility to disease and other problems. This point also was discussed above relative to the comment by Drs. Roberts and Hutchins.

Other reported problems include fires (notably the destruction in 1994 of 8,000 square kilometers (3,000 square miles) of New South Wales, much of which was koala habitat), droughts, harassment by dogs, and killing along the roads now penetrating habitat. The petition indicated that the largest population remaining in Queensland was immediately jeopardized by a major highway project that would bisect its habitat (efforts by the petitioners and other conservation organizations reportedly have since resulted in reconsideration of this project).

The decision to propose threatened status for the koala is based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. The Service has examined the petition and supporting data, other available literature and information, and the comments received following the 90-day finding. In now arriving at the required 1-year finding and consequent proposed rule, a key factor in consideration is the apparent continued, and possibly accelerating, destruction of key koala habitat and the likelihood of further reduction and fragmentation of koala populations, with no remedy imminent.

The koala is part of a unique ecosystem that by all accounts has been drastically reduced by human activity over the past 200 years and that is continuing to be adversely affected to such extent that the species that it supports could potentially be confronted with extinction. In addition to the substantial information presented by the petitioners, the Service is impressed by the authoritative consensus regarding the past and continuing extent of this habitat deterioration. Telling points include—the IUCN/SSC assessment (Kennedy 1992) that a 50–90 percent decline in range already has occurred; Dr. Gordon's suggestion that continuation of present trends would jeopardize the species; the statement by the Australian Nature Conservation Agency (Phillips 1990) that the forests once supporting the koala are largely gone and those remaining are rapidly disappearing; and the recent reports by the Australian Department of the Environment, Sport and Territories (Glanznig 1995; Graetz, Wilson, and Campbell 1995) showing

that nearly two-thirds of koala habitat has been lost and that the destructive process is continuing unabated. Of those comments that responded negatively to the petition, none included significant discussion refuting the case for a long-term threat to the ecosystem of the koala.

Irrespective of other factors that may indicate that certain populations are endangered, the above reasoning seems applicable to the Act's definition of a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Nonetheless, the Service will seek to obtain and evaluate new information during the comment period. It is possible that such review would lead to withdrawal of all or part of this proposal or to a final rule classifying the koala, or certain populations thereof, as endangered. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal, except as may apply to importation permit procedures.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act as required by Section 10(d). For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of this listing on proposed or ongoing activities involving the species. Should the koala be listed as a threatened species, importations into and exportations from the United States, and interstate and foreign commerce, of koala (including parts and products) without a threatened species permit would be prohibited. Koala removed from the wild or born in captivity prior to the date the species is listed under the Act would be considered "pre-Act" and would not require permits unless they enter commerce. When a specimen is sold or offered for sale, it loses its pre-Act status. Currently 10 zoological institutions in the United States hold koalas. Questions regarding permit requirements for U.S. activities should be directed to the Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (1–800–358–2104).

Processing of this proposed rule conforms with the Service's Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists; processing new proposals to add species to the Lists; processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) Information concerning the distribution of this species;

(3) Current or planned activities in the involved areas, and their possible effect on the subject species; and

(4) Details on the laws, regulations, and management programs covering each of the affected populations of this species.

Final promulgation of the regulation on the koala will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ substantially from this proposal. It is particularly emphasized that further evaluation could lead to withdrawal of all or part of this proposal, or to classification of the koala, or any population thereof, as endangered. Interested parties are urged to consider

such alternatives when examining the proposal and preparing their comments.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, must be in writing, and should be directed to the party named in the above "ADDRESSES" section.

National Environmental Policy Act

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

Required Determinations

This rule does not require collection of information that requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

Glanznig, Andreas. 1995. Native Vegetation Clearance, Habitat Loss and Biodiversity Decline. An Overview of Recent Native Vegetation Clearance in Australia and Its Implications for Biodiversity. Australian Department of the Environment, Sport and Territories, Biodiversity Series, Paper No. 6, 46 pp.

Graetz, R.D., M.A. Wilson, and S.K. Campbell. 1995. Landcover Disturbance Over the Australian Continent. A Contemporary Assessment. Australian Department of the Environment, Sport and Territories, Biodiversity Series, Paper No. 7, 86 pp.

Kennedy, Michael. 1992. Australian Marsupials and Monotremes. An Action Plan for their Conservation. World Conservation Union, Species Survival Commission, Australasian Marsupial and Monotreme Specialist Group, Gland, Switzerland, 103 pp.

Phillips, Bill. 1990. Koalas. The Little Australians We'd All Hate to Lose. Australian National Parks and Wildlife Service (now Australian Nature Conservation Agency), Australian Government Publishing Service, Canberra, 104 pp.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend section 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Koala	*Phascolarctos cinereus.*	Australia	Entire	T		NA	NA
*	*	*	*	*	*	*	*

Dated: September 9, 1998.

Jamie Rappaport Clark,

Director.

[FR Doc. 98–25267 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 183
Tuesday, September 22, 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

Office of the Secretary

Determination of Total Amounts and Quota Period for Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the aggregate quantity of 1,614,937 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year (FY) 1999, with 450,000 metric tons subject to possible cancellation. This notice in addition establishes the aggregate quantity of 50,000 metric tons (raw value basis) for certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS during FY 1999.

EFFECTIVE DATE: September 22, 1998.

ADDRESSES: Inquiries may be mailed or delivered to the Import Policy and Programs Division Director, Foreign Agricultural Service, Ag Stop 1021, South Building, U.S. Department of Agriculture, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: David Williams (Team Leader, Import Policy and Programs Division), 202–720–2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides in pertinent part as follows:

> The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than, 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and the aggregate quantity of sugars, syrups, and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw can sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas (TRQs) for entry during the fiscal year beginning October 1.

USDA issued a news release on June 29, 1998, soliciting comments regarding the FY 1999 TRQ administrative approach. Approximately 30 comments were received. Most of the comments were supportive of the current administrative approach, although many suggested changes that would lead to higher or lower prices in the U.S. domestic market. Some suggested a change in the trigger level for the allocation or cancellation of the reserved TRQ quantity. Those suggestions ranged from a level of 13.5 percent to 20.5 percent, with the producers supporting a lower trigger level and the refiners and manufacturers supporting a higher trigger level. One of the comments suggested abolishment of the current TRQ administrative approach, recommending a return to an ad hoc method of determining the TRQ.

After carefully considering those comments, USDA will use a 15.5 percent trigger for the allocation or cancellation of 450,000 metric tons, 150,000 tons respectively, in January, March and May.

Allocations of the quota amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,614,937 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1998, through September 30, 1999. Of this quantity, 1,164,937 metric tons will be immediately available, to be allocated by the United States Trade Representative, and the remaining 450,000 metric tons will be held in reserve.

If the stocks-to-use ratio published in the January 1999 World Agricultural Supply and Demand Estimates (WASDE) is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 150,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the January 1999 WASDE is greater than 15.5 (rounded to the nearest tenth), 150,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

If the stocks-to-use ratio published in the March 1999 WASDE is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 150,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the March 1999 WASDE is greater than 15.5 percent (rounded to the nearest tenth), 150,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

If the stocks-to-use ratio published in the May 1999 WASDE is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 150,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the May 1999 WASDE is greater than 15.5 percent (rounded to the nearest tenth), 150,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

I have further determined that an aggregate quantity of up to 50,000 metric tons, raw value, of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10,1702.90.10, and 2106.90.44 of the HTS may be entered or

withdrawn from warehouse for consumption during the period from October 1, 1998 through September 30, 1999. I have further determined that out of this quantity of 50,000 metric tons, the quantity of 4,656 metric tons, raw value, is reserved for the importation of specialty sugars. These TRQ amounts may be allocated among supplying countries and areas by the United States Trade Representative.

I will issue Certificates of Quota Eligibility (CQEs) to allow the Philippines, Brazil, and the Dominican Republic to ship up to 25 percent of their respective initial country allocations at the low-tier tariff during each quarter of FY 1999. Australia, Guatemala, Argentina, Peru, Panama, El Salvador, Colombia, South Africa, and Nicaragua will be allowed to ship up to 50 percent of their respective initial country allocations in the first 6 months of FY 1999. Unentered allocations, during any quarter or six month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to their respective country allocations may be entered at the low-tier tariff at any time during the fiscal year. If additional country allocations result from the January, March, and May blocks of the reserved TRQ quantity, they may be entered subsequent to their announcement by the United States Trade Representative.

Mexico's North American Free Trade Agreement (NAFTA) access to the U.S. market is established at 25,000 metric tons raw value. That access will be for either raw or refined sugar, but total access under the refined sugar allocation and the raw-sugar allocation is not to exceed 25,000 metric tons. Mexico's NAFTA access for either raw or refined sugar is established in Annex 703.2.

Signed at Washington, DC, on September 16, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–25292 Filed 9–21–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Small Farms; Meeting

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service (NRCS) to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The Commission's next meeting is October 6, 7, and 8, 1998.

PLACE, DATE AND TIME OF MEETING: On October 6, 1998, the Commission will meet at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia, from 7 p.m to 9:30 p.m. On October 7 and 8, 1998, the Commission will meet at the U.S. Department of Agriculture (USDA), Jamie L. Whitten Federal Building, Room 107A, 1400 Independence Avenue SW., Washington, DC. On October 7, 1998, the Commission will meet from 9 a.m. to 6 p.m. and on October 8, 1998 from 8:30 a.m. to 12:30 p.m. The purpose of the meeting is to receive an implementation progress report from USDA on the Commission's report, "A Time to Act," issued in January 1998 and to discuss future actions. The meeting is open to the public.

ADDRESSES: National Commission on Small Farms. USDA–NRCS, Post Office Box 2890, South Building, Room 6013, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 720–0122. The fax number is (202) 720–0639.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. The Commission may analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. On January 22, 1998, the Commission issued a report "A Time to Act, A Report of the USDA National Commission on Small Farms." The report's recommendations included: proposed changes to existing policies, programs, regulations, training, and program delivery and outreach systems; suggested approaches that could assist small and beginning farmers and involve the private sectors and government, including ways to meet the needs of minorities, women, and persons with disabilities; and proposed areas where new partnerships and collaborations are needed.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implemented a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms. Individuals may submit written comments to the contact person listed above before or after the meeting.

Dated: September 17, 1998.

Deborah Matz,

Deputy Assistant Secretary for Administration.

[FR Doc. 98–25339 Filed 9–21–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise a Currently Approved 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 revise a currently approved information collection, the Milk and Milk Products Surveys.

DATES: Comments on this notice must be received by November 27, 1998.

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: Milk and Milk Products Surveys.

OMB Number: 0535–0020.

Expiration Date of Approval: January 31, 1999.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock

production. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the Nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Approval to add weekly butter, dry whey, and nonfat dry milk price reports to the information collection is requested.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 44,619.

Estimated Total Annual Burden on Respondents: 21,571 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., September 3, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–25294 Filed 9–21–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Manufactures.

Form Number(s): MA–1000(L), MA–1000(S).

Agency Approval Number: 0607–0449.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 196,000 hours.

Number of Respondents: 58,000.

Avg Hours Per Response: 3 hours and 23 minutes.

Needs and Uses: The Census Bureau has conducted the Annual Survey of Manufactures (ASM) since 1949 to provide key measures of manufacturing activity during intercensal periods. In census years ending in 2 and 7, we mail and collect the ASM as part of the census of manufactures. This survey is an integral part of the Government's statistical program. The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by product class, inventories, and expenditures for both plant and equipment and structures. The survey provides data for most of these items for each of the 473 industries as defined in the North American Industry Classification System (NAICS). It also provides geographic data by state at a more aggregated industry level. The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. The ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories.

We allowed the clearance for the ASM to lapse during FY 1997 since these data were collected as part of the 1997 Economic Censuses. We are now requesting a reinstatement of the clearance for the 1998 " 2001 collections of the ASM. We are dropping one form from the clearance, the MA–1000(B). This form was used to obtain greater detailed information on principal activity from partially unclassified firms. We now receive this information from the Bureau of Labor Statistics.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25312 Filed 9–21–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Overseas Business Interest Questionnaire.

Agency Form Number: ITA–471P.

OMB Number: 0625–0039.

Type of Request: Regular Submission.

Burden: 490 hours.

Number of Respondents: 1,000.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: This collection allows U.S. firms participating in overseas trade events sponsored by the U.S. Department of Commerce's International Trade Administration (ITA) an opportunity to specifically

identify their marketing objective(s) for a specific event as well as current marketing activities and status in the specific foreign market where the event will take place. The ITA/Commercial Service overseas posts use the information to schedule business appointments during the trade event, to arrange "blue ribbon" calls on key agents or distributors identified by participants prior to an event, and to issue specific invitations to appropriate prospective overseas business partners. It is critical to prearrange business appointments, thus providing U.S. participants with a program of high caliber business contacts.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 16, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25313 Filed 9–21–98; 8:45 am]

BILLING CODE 3510–FP–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: 98–045. Applicant: The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78284–7750. Instrument: Electron Microscope, Model EM208S. Manufacturer: N.V. Philips, Czech Republic. Intended Use: The instrument will be used to study the ultrastructural differences in tissues, bacterial growth and response on plastics, cellular response to non-biological particulates, the effects of mutations on photoreceptor structure and the expression pattern of Rh5 opsin protein in rhabdomeres of R–8 cells employing fly retinas. Application accepted by Commissioner of Customs: September 2, 1998.

Docket Number: 98–046. Applicant: University of Minnesota, Biomedical Engineering Institute, Box 297 Mayo, 420 Delaware Street SE, Minneapolis, MN 55455. Instrument: (2) Bioelectric Impedance Tomographs, Models APT/EIT and Mk3a EIT/APT. Manufacturer: University of Sheffield, United Kingdom. Intended Use: The instruments will be used to produce real time dynamic images of cardiac blood volume changes and to characterize the condition of different tissues such as the lung. Experiments will be conducted on subjects with cardiac problems, in heart failure and with peripheral vascular disease using the data to develop and evaluate simpler instruments using only four electrodes to obtain similar information. Application accepted by Commissioner of Customs: September 2, 1998.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 98–25311 Filed 9–21–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, October 30, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–25425 Filed 9–18–98; 1:21 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, October 26, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[Fr Doc. 98–25426 Filed 9–18–98; 1:21 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, October 23, 1998.

PLACE: 1155 21st., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–25427 Filed 9–18–98; 1:21 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 a.m., Monday, October 19, 1998.

PLACE: 1155 21st., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–25428 Filed 9–18–98; 1:21 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, October 16, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–25429 Filed 9–18–98; 1:21 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, October 12, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–25430 Filed 9–18–98; 1:21 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, October 9, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–25431 Filed 9–18–98; 1:21 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, October 5, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–25432 Filed 9–18–98; 1:21 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, October 2, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–25433 Filed 9–18–98; 1:21 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment and Finding of No Significant Impact for the Disposal and Reuse of Fort Pickett, Virginia, BRAC 95

AGENCY: Department of the Army, DoD.
ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure, except minimum essential ranges, facilities, and training areas as a Reserve Component enclave, of Fort Pickett, VA. Land the Army deemed not minimal essential was declared excess and made available for disposal and reuse.

The Final Environmental Assessment (EA) evaluated the environmental and sociological impacts of the disposal and subsequent reuse of the 3,474 acres. Alternatives examined in the EA include encumbered disposal of the property and no action. Unencumbered disposal was not evaluated since certain encumbrances exist which are either required by law or cannot be practically removed. Under the no action alternative, the Army would not dispose of the property but would maintain it in caretaker status for an indefinite period.

DATES: Interested parties are invited to review and comment on the Finding of No Significant Impact (FNSI) on or before October 22, 1998.
ADDRESSES: A copy of the Final EA and FNSI may be obtained by writing to the U.S. Army Corps of Engineers, ATTN: Mr. Richard Muller, Project Management Division, 803 Front Street, Norfolk, VA 23510–1096.
FOR FURTHER INFORMATION CONTACT: Mr. Richard Muller at (757) 441–7767 or by facsimile at (757) 441–7546.
SUPPLEMENTARY INFORMATION: The EA addressed the environmental and socioeconomic effects associated with an action directed by the 1995 Base Closure and Realignment Commission: disposal of approximately 3,474 acres of property at Fort Pickett, Virginia. The EA also analyzed reuse of the installation by the local community, as planned by the Fort Pickett Local Reuse Authority. The Reuse Authority has prepared a reuse plan, which was the primary factor in development of the reuse scenarios analyzed in this EA. One disposal alternative (encumbered) was presented and evaluated in this environmental analysis, as are three reuse scenarios representing low, medium-low and medium intensity reuse. In addition to the proposed action, a no action alternative, with the property remaining in caretaker status, was evaluated. Other alternatives are discussed but not analyzed because they were considered infeasible. Implementation of the preferred alternative (encumbered disposal) would be expected to result in minor beneficial and minor adverse effects on several environmental conditions.

A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of Fort Pickett was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

Dated: September 16, 1998.

Richard E. Newsome,
Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA, (I,L&E).
[FR Doc. 98–25301 Filed 9–21–98; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: October 14–15, 1998.

Place: U.S. Army Engineer District, Wilmington, North Carolina, and U.S. Army Engineer District, Norfolk, Virginia.

Time: 8:30 a.m. to 5:00 p.m. (October 14, 1998); 9:30 a.m. to 5:00 p.m. (October 15, 1998).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: On October 14, 1998, the civilian members of the Board will be briefed on various projects at the U.S. Army Engineer District, Wilmington, office in the morning and tour beach-fill projects in the afternoon.

On Thursday morning, October 15, 1998, the Board will hold an Executive Session at the U.S. Army Engineer District, Norfolk, office. In the afternoon, the military members of the CERB will tour the U.S. Army Engineer Waterways Experiment Station's Field Research Facility in Duck, North Carolina, and the civilian members will tour beach projects in the Norfolk area.

This meeting is open to the public, but since seating is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Robin R. Cababa,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 98–25308 Filed 9–21–98; 8:45 am]

BILLING CODE 3710–PV–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Wednesday, October 7, 1998: 6 p.m.–9 p.m., 6 p.m. to 7 p.m. (public comment session).

ADDRESS: Los Alamos Inn, 2201 Trinity Drive, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order by DOE
6:00 p.m.—Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m.—Public Comments
7:00 p.m.—Break
7:15 p.m.—Board Business
9:00 p.m.—Adjourn

Public Participation

The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

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 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on September 16, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–25337 Filed 9–21–98; 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 (Pub. L. 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, October 7, 1998, 6 p.m.–9:30 p.m.

ADDRESS: Ramada Inn, 420 S. Illinois Avenue, Oak Ridge, TN 37830.

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: Mr. Jim Hall, Manager of DOE-Oak Ridge Operations, will give his perspective on environmental management and cleanup of the Oak Ridge Reservation.

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 Officer 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 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 pm on Monday, Wednesday, and Friday; 8:30 am and 7 pm on Tuesday and Thursday; and 9 am and 1 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 September 16, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–25338 Filed 9–21–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–002]

Atlanta Gas Light Company; Notice of Compliance Filing

September 16, 1998.

Take notice that on August 31, 1998, Atlanta Gas Light Company (Atlanta) hereby notifies the Commission that it accepts the limited-term, limited-jurisdiction blanket certificate of public convenience and necessity issued by the Commission in the above-referenced proceeding by order dated July 31, 1998, which authorizes Atlanta to provide Rate Schedule IBSS service when it unbundles its retail natural gas services on November 1, 1998, or the Rate Schedule IBSS commences.

Atlanta states that pursuant to ordering Paragraph (C) of the July 31 order, Atlanta encloses Rate Schedule IBSS and the related terms of service that are part of Atlanta's tariff approved by the Georgia Public Service Commission (GPSC) on June 30, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Relations. All such protests must be filed on or before September 22, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25236 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–361–001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1998.

Take notice that on September 11, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1998:

Fifth Revised Sheet No. 10

Equitrans states that the filing implements a reduction in retainage factors to .65% for storage services and 3.25% for transportation services effective August 1, 1998. Equitrans states that the retainage factors proposed in this filing have been agreed to by Equitrans and its customers as part of a comprehensive rate case settlement in Docket No. RP97–346.

Equitrans states that it filed tariff sheets herein on July 31, 1998 proposing to implement the retainage levels agreed upon in the settlement effective September 1, 1998, claiming that it would achieve the agreed-upon retainage levels for the month of August through a discount and waiver of its currently-effective retainage levels applicable to all shippers on a non-discriminatory basis. The Commission approved the tariff filing on August 31, but instructed Equitrans to file a tariff sheet effective August 1, 1998 providing for those lower retainage factors. Equitrans states that this filing is made in compliance with the Commission's order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25237 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–396–001]

Florida Gas Transmission Company; Notice of Compliance Filing

September 16, 1998.

Take notice that on September 10, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective September 17, 1998, the following tariff sheet:

Fourth Revised Sheet No. 129

FGT states that on September 3, 1998, it made a filing in Docket No. RP98–396–000 (September 3 Filing) to modify Section 13.D of the General Terms and Conditions of its Tariff to provide that each time FGT invokes an Alert Day, it will post the Tolerance Percentage which would apply prior to recording volumes in the Alert Day Account. The September 3 Filing also requested expedited approval to make the tariff changes effective September 17, 1998 because FGT believes the proposed changes will benefit all shippers on the system during a time of reduced flexibility due to a force majeure event at FGT's Compressor Station 15 on August 14, 1998.

FGT further states that on September 9, 1998, the Commission issued a Letter Order (September 9 Order) indicating the September 3 Filing contained a duplicately numbered tariff sheet, Third Revised Sheet No. 129, already on file. Revisions to Sheet No. 129 were previously submitted and paginated as Third Revised Sheet No. 129 on August 30, 1996 in Docket No. RP96–366–000. However, this tariff sheet was subsequently withdrawn pursuant to the Stipulation and Agreement in Docket No. RP96–366–002 approved by Commission Order issued January 16, 1997. The September 9 Order states that the Commission's Pagination Guidelines prohibit such duplication and requires FGT to formally resubmit Sheet No. 129 within one work day. FGT is making the instant filing in compliance with the September 9 Order.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25238 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–020]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

September 16, 1998.

Take notice that on September 11, 1998, Koch Gateway Pipeline Company (Koch) hereby submits to the Commission a contract for disclosure of a recently negotiated rate transaction. Koch requests an effective date of September 24, 1998.

Special Negotiated Rate Under Interruptible Transportation Service Agreement Between Koch and Texaco Natural Gas Inc.

Koch states that it has served copies of this filing upon each and all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25235 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–399–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1998.

Take notice that on September 10, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following compliance tariff sheets to become effective November 1, 1998:

Second Revised Sheet Number 206
First Revised Sheet Number 207
Original Sheet Number 207A
Third Revised Sheet Number 210
Third Revised Sheet Number 215
Fourth Revised Sheet Number 246
Original Revised Sheet Number 246A
Second Revised Sheet Number 248A
First Revised Sheet Number 248A.01
Second Revised Sheet Number 248B
First Revised Sheet Number 248C
Original Sheet Number 248C.01
Original Sheet Number 248C.02
First Revised Sheet Number 248D
First Revised Sheet Number 248E
First Revised Sheet Number 248F
Original Sheet Number 248F.01
First Revised Sheet Number 248G
First Revised Sheet Number 248H
Original Sheet Number 248H.01
First Revised Sheet Number 248I
First Revised Sheet Number 248J
First Revised Sheet Number 248K
Third Revised Sheet Number 249
Third Revised Sheet Number 257
Original Sheet Number 257A
Second Revised Sheet Number 259
Original Sheet Number 259A

Northern Border states that this filing is made in compliance with Order No. 587–H, issued in Docket No. RM96–1–008 on July 15, 1998. These compliance tariff sheets reflect the GISB standards adopted in Order No. 587–H.

Northern Border states that a copy of the instant filing is being served on all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25240 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–398–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1998.

Take notice that on September 4, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 1, 1998:

Second Revised Sheet No. 225–A
Original Sheet No. 225–A.01

Northwest states that the purpose of this filing is to expand the nomination timelines reflected in Section 14 of the General Terms and Conditions of Northwest's tariff to include timelines for an evening and two intra-day nomination cycles.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25239 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas & Electric Company; Notice of Public Meetings To Discuss Streamflow Needs for the Proposed Relicensing of the Rock Creek-Cresta Hydroelectric Project

September 16, 1998.

Take notice that the Commission staff will hold two meetings with Pacific Gas & Electric Company (PG&E), the applicant for the Rock Creek-Cresta Hydroelectric Project No. 1962, parties in the relicensing proceeding, and concerned agencies. The project is located on the North Fork Feather River, about 35 miles northeast of the city of Oroville, in northern California. The meetings will be held on September 29–30, 1998, and October 20–21, 1998, from 10:00 a.m. to 4:00 p.m. at the U.S. Fish and Wildlife Service offices, 3310 El Camino, Sacramento, California.

The purpose of the meeting is to discuss streamflow releases in the reaches of the North Fork Feather River that the project affects. All interested individuals, organizations, and agencies are invited to attend the meeting.

For further information, please contact Dianne Rodman at (202) 219–2830.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25241 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–769–000]

Paiute Pipeline Company; Notice of Request Under Blanket Authorization

September 16, 1998.

Take notice that on September 9, 1998, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP98–769–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain lateral pipeline facilities located along Paiute's Fort Churchill lateral in Lyon County, Nevada under Paiute's blanket certificate issued in Docket No. CP84–739–000 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.

Paiute proposes to abandon approximately 1,305 feet of 16-inch pipeline on its Fort Churchill Lateral at a point where the lateral crosses the Carson River. Paiute states that as a result of flood activity in the area, a portion of the pipeline had been unearthed and had become exposed to the flow of the river's waters. Paiute further states that due to the substantial risk of a rupture of the pipeline, Paiute proceeded to replace the affected section of pipeline, under Section 157.208(a) of the Commission's regulations and its blanket certificate authority, by installing a new river crossing pipeline underneath the river bed. As a result, Paiute states that the pipeline segment for which Paiute seeks abandonment authority is completely disconnected from its pipeline system. Paiute proposes to partially remove and to partially abandon in place the disconnected segment. Paiute states that the proposed abandonment will not cause any reduction or termination of the natural gas service rendered to any of Paiute's customers.

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. 98–25233 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–770–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

September 16, 1998.

Take notice that on September 10, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–770–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to serve a new customer, LSP Energy Limited Partnership (LSP), an electric power generator located in Panola County, Mississippi, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, 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.

Tennessee proposes to construct and operate a new delivery point on its system to provide up to 216,000 Mcf (approximately 219,240 dekatherms) of natural gas per day to LSP at a new electric power generating plant which LSP will build in Panola County, Mississippi. Tennessee proposes to install two 12-inch tap assemblies on its 100 Line at approximately Mile Post (M.P.) 63 – 3+6.8 and M.P. 63 – 4+6.8, and that the construction will take place on its existing right-of-way. In addition, Tennessee states that it will install electronic gas measurement (EGM) and communications equipment, gas chromatograph equipment, a building for the EGM, communications, and chromatograph equipment on an adjacent site to be provided by LSP and valving and appurtenant facilities. Tennessee states it will own, operate and maintain the hot tap assemblies, the EGM and communications equipments, the chromatograph equipment, the building for the EGM, communications, and chromatograph equipment and the valving and appurtenant facilities. Tennessee states that LSP will install, own, operate and maintain the interconnecting piping and other appurtenant facilities and will install, own, and maintain the measurement facilities. Tennessee states that it will operate the measurement facilities, and that LSP will reimburse Tennessee for the cost of the project which is estimated to be $231,000.

Tennessee states that the addition of the proposed delivery point is not expected to have any significant impact on Tennessee's peak day and annual deliveries. Further, Tennessee states that it will have sufficient capacity to accomplish deliveries at the delivery point without detriment or disadvantage to Tennessee's other customers. Tennessee also states that the construction of this delivery point is not prohibited by Tennessee's existing tariff, and that the total volumes to be

delivered to LSP after the construction of the delivery point is completed will not exceed the total quantities authorized prior to the construction of the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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. 98–25234 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–53–000, et al.]

Northeast Empire Limited Partnership #1, et al.; Electric Rate and Corporate Regulation Filings

September 14, 1998.

Take notice that the following filings have been made with the Commission:

1. Northeast Empire Limited Partnership #1

[Docket No. EC98–53–000]

Take notice that on September 10, 1998, Northeast Empire Limited Partnership #1, C/O Thomas D. Emergo, Twenty South Street, P. O. Box 407, Bangor, Maine, 04402–0407, tendered for filing a Supplement to their Application for Approval of Disposition of Jurisdictional Facilities pursuant to Part 33 of the Commission's Rules.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Minnesota Power Inc.

[Docket No. ER98–3891–001]

Take notice that on September 9, 1998, Minnesota Power Inc., (Minnesota Power), tendered for filing a Revised Exhibit A, indicating Minnesota Power's unbundled transmission rate for the City of Pierz, Minnesota based on Minnesota Power's open access transmission rate. Exhibit A and Attachment No. 1, as submitted also reflect Minnesota Power, Inc.'s corporate name change which became effective May 27, 1998.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power, Inc.

[Docket No. ER98–4096–000]

Take notice that on September 9, 1998, Minnesota Power, Inc., (formerly known as Minnesota Power and Light Company) (MP), tendered for filing a report of short-term transactions that occurred during the quarter ending June 30, 1998, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000.

MP states that it is submitting this report for the purpose of complying with the Commission's requirements relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The report contains summaries of such transactions under the WCS–2 Tariff for the applicable quarter with confidential price and quantity information removed.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Sempra Energy Trading Corp.

[Docket No. ER98–4497–000]

Take notice that on September 9, 1998, Sempra Energy Trading Corp. (SET), tendered for filing pursuant to 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2 (Ancillary Services) to be effective immediately.

SET intends to buy and sell ancillary services at wholesale nationwide or, in the alternative, in the California market. SET proposes to sell four of these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 2 (Ancillary Services), provides for the sale of Regulation and Frequency Control, Spinning Reserve Service, and Supplemental Reserve Service at market-based rates.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Co.

[Docket No. ER98–4498–000]

Take notice that on September 9, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing pursuant to 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2 (Ancillary Services) to be effective immediately.

SDG&E intends to sell ancillary services at wholesale from electric generating plants and from combustion turbines located throughout its service territory, as well as from capacity to which it has contract rights. SDG&E proposes to sell four of these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 2 (Ancillary Services) provides for the sale of regulation, spinning reserve, non-spinning reserve, and replacement reserve at market-based rates.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Ocean State Power; Ocean State Power II

[Docket No. ER98–4499–000]

Take notice that on September 9, 1998, Ocean State Power (OSP) and Ocean State Power II (OSP II) (collectively, Ocean State) tendered for filing the following supplements (the Supplements) to their rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission) for OSP Supplement No. 20 to Rate Schedule FERC No. 2, for OSP II Supplement No. 22 to Rate Schedule FERC No. 6.

Copies of the Supplements have been served upon Ocean State's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas & Electric Company

[Docket No. ER98–4500–000]

Take notice that on September 9, 1998, San Diego Gas & Electric Company (SDG&E), filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, an amendment to the Master Must Run Agreement (MMRA) relating to SDG&E's combustion turbine facilities, to be entered into between SDG&E and the California Independent System Operator (ISO), originally filed on October 31, 1997 in Docket No. ER98–496–000, and modified by SDG&E's filing of March 11, 1998 in Docket No. ER98–2160–000. The

amendments will allow either SDG&E or the ISO to terminate the must-run contract for a facility under certain circumstances in which continued operation of the facility has been rendered impossible or impractical by the termination, expiration, or limitation of a governmental authorization required by the Owner to site, operate, or obtain access to the facility. SDG&E notes that the contract under which occupies certain and owned by the United States Navy for use as a turbine site, expires on September 29, 1998.

SDG&E requests that proposed amended MMRA be made effective as of September 29, 1998, so that the MMRA may terminate if negotiations to extend the contract are unsuccessful.

SDG&E has served this filing on all parties listed on the official service list in Docket Nos. ER98–496–000 and ER98–2160–000.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER98–4501–000]

Take notice that on September 9, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for firm transmission service under Part II of its Transmission Services Tariff with Enron Power Marketing, Inc.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Columbus Southern Power Company

[Docket No. ER98–4502–000]

Take notice that on September 9, 1998, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement (Agreement) dated July 22, 1998, between CSP and South Central Power Company, (hereinafter called SCP) and Buckeye Power, Inc. (hereinafter called Buckeye).

Buckeye has requested CSP provide a delivery point, pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye Power, Inc. (hereinafter called Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP requests an effective date of November 1, 1998, for the tendered agreements.

CSP states that copies of its filing were served upon South Central Power Company, Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98–4503–000]

Take notice that on September 9, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and OGE Energy Resources, Inc., (OGE). The Transmission Service Agreements allow OGE to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on OGE, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company

[Docket No. ER98–4504–000]

Take notice that on September 9, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Burlington Electric Department.

Maine Public requests waiver of the Commission's 60-day notice requirements that the attached service agreement can become effective on June 17, 1998.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc

[Docket No. ER98–4505–000]

Take notice that on September 9, 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 City Water and Light Plant of the City of Jonesboro (Arkansas) for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Washington Water Power Company

[Docket No. ER98–4509–000]

Take notice that on September 9, 1998, Washington Water Power tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, and Certificate of Concurrence with Arizona Public Service Company, (which replaces unexecuted Service Agreement No. 20 previously filed with the Commission under Docket No. ER97–1252–000, effective December 15, 1996 and an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with DuPont Power Marketing, Inc.

WWP requests waiver of the prior notice requirement and requests that the Service Agreement for DuPont Power Marketing, Inc., be accepted for filing effective September 1, 1998.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

[Docket No. ER98–4510–000]

Take notice that on September 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), and Orange and Rockland Utilities, Inc., and its jurisdictional subsidiaries (Orange and Rockland) filed a joint open access transmission tariff (joint OATT) pursuant to which Con Edison and Orange and Rockland will provide open access transmission service across their transmission systems at single-system, non-pancaked rates.

This filing is in conjunction with the filing of the Application of Con Edison and Orange and Rockland for Approval of Merger and Related Authorizations. Con Edison and Orange and Rockland state that the joint OATT will become effective only if the open access transmission tariff filed by the New York Independent System Operator is not in effect as of the consummation date of the merger.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas And Electric Co. Kentucky Utilities Company

[Docket No. ER98–4511–000]

Take notice that on September 9, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an unexecuted Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and Constellation Power Source, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: September 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Prairieland Energy, Inc.

[Docket No. TX98–4–000]

Take notice that on September 10, 1998, Prairieland Energy, Inc. (Prairieland) filed an application with the Federal Energy Regulatory Commission requesting the Commission to order Commonwealth Edison Company (Edison) to provide transmission service pursuant to Section 211 of the Federal Power Act.

Prairieland has requested 12 Megawatts (MW) of firm point-to-point transmission service for a term of five years commencing October 1, 1998.

Copies of Prairieland's application were served upon representatives of Edison and the Illinois Commerce Commission.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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,

Secretary.

[FR Doc. 98–25231 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4333–000, et al.]

Primary Power Marketing, LLC, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1998.

Take notice that the following filings have been made with the Commission:

1. Primary Power Marketing, LLC

[Docket No. ER98–4333–000]

Take notice that on September 10, 1998, Primary Power Marketing, LLC, tendered for filing an amended application for waivers and blanket approvals and order accepting rate schedule for market based rates.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER98–4506–000]

Take notice that on September 10, 1998, Public Service Electric and Gas Company (PSE&G), filed for authorization under Section 205 of the Federal Power Act to sell power to its affiliate, PSEG Energy Technologies, Inc. (ET) at market-based rates.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Duquesne Light Company

[Docket No. ER98–4507–000]

Take notice that on September 10, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated September 8, 1998 with Tractebel Energy Marketing, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Tractebel Energy Marketing, Inc., as a customer under the Tariff. DLC requests an effective date of September 8, 1998, for the Service Agreement.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER98–4508–000]

Take notice that on September 10, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Western Resources and one name change for DYNEGY, Inc., which is the new name of Electric Clearinghouse, Inc.

CILCO requested an effective date of September 8, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER98–4513–000]

Take notice that on September 10, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing separate market-based sales tariffs for each of itself and its Missouri Public Service, WestPlains Energy—Kansas, and WestPlains Energy—Colorado operating divisions.

UtiliCorp requests that the Commission accept the tariffs for filing to become effective on November 9, 1998.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER98–4514–000]

Take notice that on September 10, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA) between Duke and Amoco Energy Trading Corporation, dated as of August 21, 1998. The parties have not engaged in any transactions under the MRSA as of the date of filing.

Duke requests that the MRSA be made effective as of August 21, 1998.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cadillac Renewable Energy LLC

[Docket No. ER98–4515–000]

Take notice that on September 10, 1998, Cadillac Renewable Energy LLC, a Delaware limited liability company (CRE), petitioned the Commission for acceptance of Cadillac Renewable Energy LLC Rate Schedule No. FERC No. 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

CRE intends to engage in wholesale electric power and energy transactions as a marketer. CRE is exclusively engaged in the operation of an approximately 38 MW (net) small power production facility in Cadillac, Michigan. CRE is owned 50% by Decker Energy-Cadillac, Inc., and 50% by NRG

Cadillac, Inc. NRG Cadillac, Inc., is an indirect subsidiary of Northern States Power Company, a Minnesota electric utility company.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Aquila Power Corporation

[Docket No. ER98–4516–000]

Take notice that on September 10, 1998, Aquila Power Corporation filed a revised rate schedule and code of conduct.

Aquila requests that the Commission accept the revised rate schedule and code of conduct for filing to become effective on November 9, 1998.

Comment date: September 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company) of New York, Inc. and Orange and Rockland Utilities, Inc.

[Docket No. EC98–62–000]

Take notice that on September 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), a wholly-owned subsidiary of Consolidated Edison, Inc. (CEI), and Orange and Rockland Utilities, Inc. (Orange and Rockland), on behalf of itself and its jurisdictional subsidiaries, Rockland Electric Company and Pike County Light & Power Company, tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Regulations of the Federal Energy Regulatory Commission for an order authorizing and approving the acquisition by CEI of the common stock of Orange and Rockland (the Merger).

Pursuant to the terms of the Agreement and Plan of Merger dated as of May 10, 1998, CEI, an exempt public utility holding company that owns all of the common stock of Con Edison, will acquire all of the outstanding common stock of Orange and Rockland. Orange and Rockland will be merged with and into C Acquisition Corp., a wholly-owned subsidiary of CEI formed to accomplish the Merger, with Orange and Rockland being the surviving corporation and a wholly-owned subsidiary of CEI separate from CEI's wholly-owned public utility subsidiary, Con Edison.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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,

Secretary.

[FR Doc. 98–25230 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

September 16, 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.

b. *Project No:* 2101–059.

c. *Date Filed:* September 15, 1998.

d. *Applicant:* Sacramento Municipal Utility District.

e. *Name of Project:* Upper American River Project: White Rock and Camino Developments.

f. *Location:* El Dorado County, Pollock Pines, CA.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Al Ortega, P.O. Box 15830, Sacramento, CA 95817.

i. *FERC Contact:* Doan Pham, (202) 219–2851.

j. *Comment Date:* October 21, 1998.

k. *Description of the Filing:* The licensee filed an application to amend the license to install new, high efficiency turbine runners in its White Rock #1 and #2, and Camino 1# powerhouses, in conjunction with scheduled maintenance work at the units. The upgrades will result in an increase in total project installed capacity of about 32 megawatts (MW). The licensee indicates the turbine runner replacements will not result in any increase in hydraulic capacity, and will not involve construction of any new dam nor diversion, any change in the normal maximum surface area or elevation of an existing impoundment, any change to project operations, or the addition of new water power turbines other than to replace existing turbines. Since all the upgrade work will be performed within the powerhouses, there will be no streambed or ground disturbances associated with installing the new turbine runners. Neither installation nor operation of the new turbine runners will result in impacts to water quality, ability to maintain minimum flow requirements, or any other environmental impacts.

l. 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. 98–25232 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

September 16, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2670–014.

c. *Date Filed:* August 21, 1998.

d. *Applicants:* Northern States Power Company—Wisconsin City of Eau Claire, Wisconsin.

e. *Name of Project:* Dells Hydroelectric Project.

f. *Location:* On the Chippewa River in Eau Claire and Chippewa Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Chris M. Olson, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 836–2401.

i. *FERC Contact:* Mark Pawlowski (202) 219–2795.

j. *Comment Date:* Within 60 days of the notice issuance date.

k. *Description of Project:* The existing project would consist of: (1) 366-foot-long concrete gated spillway dam with 13 Tainter gates; (2) a 1,183-acre reservoir; (3) a powerhouse containing 5 turbines and 5 generator units with a total installed capacity of 7,580 kW; (3) a powerhouse containing 2 turbines and 2 generators with a total installed capacity of 1,100 kW; (4) a 1,884-foot-long transmission line; and (5) appurtenant facilities. The average annual energy generation is 48,029,165 kWh.

l. With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the comment date and serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–25242 Filed 9–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6165–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Collection of Information for Atmospheric Pollution Prevention Division Programs: Request for Generic Clearance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Collection of Information for Atmospheric Pollution Prevention Division Programs: Request for Generic Clearance, EPA ICR No. 1861.01.

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 November 23, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing EPA ICR No. 1861.01 Collection of Information for Atmospheric Pollution Prevention Division Programs: Request for Generic Clearance to: Air and Radiation Docket and Information Center, Atmospheric Pollution Prevention Division, Office of Air and Radiation (Mail Code 6102), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to Room M1500 at this address. Comments may also be submitted electronically through the internet to: a-and-r-docket@epamail.epa.gov. Comments in electronic format should also be identified by EPA ICR No. 1861.01 Collection of Information for Atmospheric Pollution Prevention Division Programs: Request for Generic Clearance. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the Air and Radiation Docket and Information Center, located at the address above. The Docket is open to the public on all federal government work days from 8 a.m. to 5:30 p.m. It is recommended that the public make an appointment to review docket materials by calling 202–260–7549. The Docket will accept phone and fax requests for material. Phone requests may be made using the phone number listed above, and fax requests may be submitted to 202–260–4400. A reasonable fee is charged for the duplication of materials.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For more information on specific aspects of this rulemaking, contact Salomon (Sol) Salinas, Atmospheric Pollution Prevention Division (Mail Code 6202J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564–9420 or salinas.sol@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are existing and potential commercial, industrial, residential, and government customers of the Atmospheric Pollution Prevention Division's voluntary public/private partnership programs.

Title: Collection of Information for Atmospheric Pollution Prevention Division Programs: Request for Generic Clearance, EPA ICR No. 1861.01. OMB Control No. and expiration date are not applicable as this is a new ICR.

Abstract: EPA's Atmospheric Pollution Prevention Division (APPD) implements a number of voluntary public/private partnership programs to encourage the widespread use of energy-efficiency technologies and practices as a profitable means of pollution prevention and to promote environmental stewardship. These programs target commercial, industrial, residential, and government customers. APPD's Commercial and Industrial Business Unit targets large and small

commercial organizations through the Energy Star Buildings and Green Lights Programs. The Residential and Energy Star Business Unit uses the Energy Star label to reach the American consumer through the Energy Star Homes, Energy Star HVAC Equipment, and Energy Star Office Equipment programs. The Methane and Utility Business Unit promotes the efficient delivery of electricity through the Energy Star Transformer Program and encourages the profitable recovery and use of otherwise wasted methane through Natural Gas Star, the Coalbed Methane Outreach, AgStar, the Landfill Methane Outreach, and the Ruminant Livestock Efficiency Programs. APPD also administers Environmental Stewardship Programs that strive to reduce emissions of highly potent greenhouse gases through partnerships with industries including the aluminum and semi-conductor industries.

Under this generic clearance, APPD will conduct a series of surveys, interviews, or focus group meetings to collect non-duplicative information on the effectiveness of current APPD programs, including partner and customer satisfaction; the potential environmental and economic effects of future or proposed APPD programs, including market or industry data; and the direct or indirect experience and/or involvement of third-parties with APPD's programs. The Agency intends to use telephone surveys or interviews, written surveys or questionnaires, face-to-face interviews, focus group meetings, or a combination of these methods, as appropriate, to collect information under this generic clearance. Through these collection methods, APPD will ask respondents to perform any or all of the following activities: Receive and review survey, interview, or focus group instructions or agenda, create or collect the information requested, respond verbally or in writing, and submit follow-up information or clarify responses, if requested.

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 Ch. 15.

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 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: In general, APPD expects to undertake 12 information collections per year under this generic clearance, two of which may involve upwards of 5,000 respondents and 10 of which may involve upwards of 500 respondents. Therefore, APPD estimates that on average 1,250 respondents will be contacted for a single information collection and that up to 15,000 respondents will be contacted annually under this generic clearance. Prior experience indicates that approximately 50 percent of all respondents, or 7,500 annually, will need to be asked to submit follow-up information or clarification. Further, APPD expects that the two larger efforts and half (or five) of the smaller efforts will be written information collection tools; the other five collections will involve telephone or other interview techniques.

Public reporting burden for this collection of information is estimated to average three hours per respondent. The burden estimate includes time to receive the instructions, create or collect the information, respond verbally or in writing, and submit follow-up information or clarify responses, if requested. There is no recordkeeping burden. It is expected that respondents will incur no capital costs and only photocopying costs when responding to each of the seven written information collections. An average of five photocopies per respondent yields an average cost of $0.50 per respondent to written collections ($0.42 per respondent when distributed across all respondents). The aggregate annualized bottom-line burden and cost for respondents is approximately 42,000 hours per year with an annual cost of approximately $2,398,800. The bottom line burden to APPD is approximately 64,428 hours, at a cost of approximately $2,441,016 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.

Dated: August 28, 1998.

Salomon Salinas,

Atmospheric Pollution Prevention Division.

[FR Doc. 98–25322 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6166–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for Electric Utility Steam Generating Unit Mercury Emissions Collection Effort

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort; EPA ICR No. 1858.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the internet at http://www.epa.gov/icr and refer to EPA ICR No. 1858.01. The ICR supporting statement and other relevant materials are also available from the EPA's website listing **Federal Register** documents at http://www.epa.gov/ttn/oarpg/t3pfpr.html.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort (EPA ICR No. 1858.01). This is a new collection.

Abstract: This ICR is intended to provide EPA information that will aid its decision making regarding mercury emissions from electric utility steam generating units. It will also provide the public with information about mercury emissions from these plants. Section 112(n)(1)(A) of the Clean Air Act (the Act) requires EPA to perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of hazardous air pollutants (HAPs) after imposition of the requirements of the Act and to prepare a Report to Congress containing the results of the study. The study has been completed and the Final Report to Congress was issued on February 24, 1998.

Section 112(n)(1)(A) of the Act also requires the Administrator to regulate electric utility steam generating units under section 112 if she finds that such regulation is appropriate and necessary after "considering the results of the study" noted above. The Administrator interprets the quoted language as indicating that the results of the study are to play a principle, but not exclusive, role in informing the Administrator's decision as to whether it is appropriate and necessary to regulate electric utility steam generating units under section 112. The Administrator believes that in addition to considering the results of the study, she may collect and consider any additional information which may be helpful to inform this decision, as well as possible subsequent decisions, regarding mercury emissions from electric utility steam generating units.

In the Final Report to Congress, the EPA stated that the available information, on balance, indicates that mercury emissions from electric utility steam generating units (primarily those of coal-fired units) are of potential concern for public health. The EPA acknowledged that there are substantial uncertainties that make it difficult to assess electric utility steam generating unit mercury emissions and controls, and that further research, monitoring, and/or evaluation would reduce those uncertainties. Among those uncertainties are: (1) The amount of mercury being emitted by all electric utility steam generating units on an annual basis (including how much is emitted from various individual types of units); (2) the speciation (or valence state) of the mercury which is being emitted (e.g., how much is divalent vs. elemental mercury); and, (3) the effectiveness of various sulfur dioxide (SO_2) control technologies in reducing the amount of each form of mercury which is emitted (including how factors such as control device, fuel type, and plant configuration affect emissions and speciation).

The EPA has designed this information collection effort so as to address these uncertainties in as cost-effective a manner as possible. For example, rather than require all coal-fired plants to perform stack testing or continuous emissions monitoring to determine their emissions, the EPA intends to require coal sampling by all of the plants and stack testing by only a stratified random sample of plants. The information gained by the stack tests will allow EPA to better calculate the effect on emissions of current emissions control technology for the universe of coal-fired plants meeting the definition of electric utility steam generating unit (section 112(a)(8) of the Act; generally units above 25 megawatts electric (MWe), including independent power producers (IPPs) and cogenerators meeting the definition).

To address the question of the amount of mercury potentially being emitted by all coal-fired electric utility steam generating units meeting the definition on an annual basis, the ICR includes a requirement for the owners/operators of all such units to periodically provide the results of certain analyses, to include mercury, of each shipment of coal which they receive, along with the quantity and source of the coal. To the extent that such analyses can be most cost effectively provided by the coal suppliers, the Agency encourages this approach, provided that the analyses represent coal that is fired by the electric utility steam generating unit (i.e., no further cleaning of the coal occurs).

To address the questions of emitted species and SO_2 control device effectiveness for mercury removal, the ICR also includes provisions requiring use of the latest mercury emission stack testing methodology to acquire additional speciated mercury data on both controlled and uncontrolled air emissions from a representative sample of units. This will allow EPA to determine factors that characterize the relationship between coal mercury content and other coal characteristics, the species of mercury formed in the unit, and the mercury removal performance of various existing emission control devices.

The coal-fired units are grouped into categories according to coal characteristics and method of SO_2 control so that a more representative sample of coal-fired units can be selected for stack testing. Coal characteristics are related to the coal type, which is defined as either bituminous (including anthracite and waste anthracite and bituminous for this ICR), subbituminous, and lignite. Sulfur dioxide control is defined as either a dry-scrubber (any type/model), wet-scrubber (any type/model), fluidized bed combustion (FBC; any type), coal gasification (any type), or no mechanical control at all (including the use of low sulfur or compliance coals or coal blending).

Information necessary to identify all coal-fired units is publicly available for facilities owned and operated by publicly-owned utility companies, Federal power agencies, rural electric cooperatives, and investor-owned utility generating companies. However, similar information is not publicly available for nonutility generators qualifying under the Public Utility Regulatory Policies Act (PURPA). Such units include, but may not be limited to, IPPs, qualifying facilities, and cogenerators. To obtain the information necessary to identify all coal-fired units in this sector for both the coal sampling and analysis and for selection of units for speciated stack sampling, the Agency will solicit from all such facilities, under authority of section 114, information relating to the type of coal used, the method of firing the coal, and the method of SO_2 control.

The EPA expects that the information requested as part of this effort will only be required for one year. The Agency will shortly propose a regulation to lower the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 activity thresholds for reporting releases of certain toxic chemicals, including mercury and mercury compounds, to the Toxic Release Inventory (TRI). The EPA plans to begin collecting information on mercury emissions from electric utility steam generating units under the new threshold in the year 2000.

Under EPCRA section 313, facilities are not required to measure their emissions specifically to report to TRI, but may use readily available data (including monitoring data) collected pursuant to other provisions of law. This ICR is authorized by section 114 of the Clean Air Act, which allows EPA to require electric utility steam generating unit owners and operators to perform analyses that they may not currently perform and, therefore, that would provide emissions estimates that may be more precise than those that would otherwise be provided under EPCRA

section 313. Facilities that have emissions information gathered through actual emissions monitoring or testing would be required to use the results of such monitoring or testing in compiling their reports under EPCRA section 313. Other facilities would be required to apply the results of the stack testing performed under this ICR (i.e., the publicly available data on coal mercury and the emissions factors developed from those data) to estimates of the mercury content of coal when reporting mercury releases to the TRI.

A final decision has not yet been made as to the new threshold for mercury under EPCRA section 313. If, after providing an opportunity for notice and comment, the EPA decides on a threshold for mercury that omits a significant portion of coal-fired power plants, the EPA may require that information be submitted under section 114 of the Act for additional years. Also, if for any reason, information collection on mercury emissions under the new lower threshold for mercury is delayed beyond the year 2000, the EPA may require the coal sampling, but not the stack testing, beyond one year.

The responses to the survey are mandatory and are being collected under the authority of section 114 of the Act. If a respondent believes that disclosure of certain information requested would compromise a trade secret, it would need to be clearly identified as such and will be treated as confidential until a determination is made. Any information subsequently determined to constitute a trade secret will be protected under 18 U.S.C. 1905. If no claim of confidentiality accompanies the information when it is received by the EPA, it may be made available to the public without further notice (40 CFR 2.203, September 1, 1976).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is sent to ten or more persons unless it displays a currently valid OMB control number. The OMB control numbers for EPA's approved information collection requests are listed in 40 CFR part 9 and 48 CFR Ch. 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on April 9, 1998 (63 FR 17406); over 120 comments were received, including several from organizations representing more than a single entity.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per respondent for the first component, 41 hours per respondent for the second component,and 90 hours per respondent for the third component. 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.

Respondents/Affected Entities: 1,100.

Estimated Number of Respondents: 1,100.

Frequency of Response: Quarterly for coal analyses; once per year for emission testing.

Estimated Total Annual Hour Burden: 45,445 hours.

Estimated Total Annualized Cost Burden: $18,891,000.

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 following addresses. Please refer to EPA ICR No. 1858.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, D.C. 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, D.C. 20503.

Dated: September 17, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–25324 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6165–2]

Notice of Certification of Alternative Battery Label

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 29, 1998 the Environmental Protection Agency certified alternative labels for nickel-cadmium (Ni-Cd) and certain small sealed lead-acid rechargeable batteries, pursuant to the Mercury-Containing and Rechargeable Battery Management Act (Battery Act), 42 U.S.C. 1432(c)(2)(A). The approval was in response to a May 7 and 8, 1998 amended application from the Rechargeable Battery Recycling Corporation (RBRC). In an effort to facilitate the collection and recycling of regulated batteries, the Battery Act prescribes national, uniform labels. Statutory labels for regulated Ni-Cd and lead-acid batteries must include three chasing arrows or a comparable recycling symbol. In addition, Ni-Cd batteries must be labeled "nickel-cadmium" or "Ni-Cd," with the phrase "BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." Regulated lead-acid batteries must be labeled "Pb" or with the words "LEAD," "RETURN," and "RECYCLE" and, if the regulated batteries are sealed, the phrase "BATTERY MUST BE RECYCLED." Manufacturers may apply to the EPA Administrator for certification that an alternative label either conveys the same information as the statutory label, or conforms with a recognized international standard that is consistent with the overall purposes of the Battery Act. The newly-certified alternative labels feature the RBRC battery recycling seal, a designation of the appropriate battery chemistry, the word "RECYCLE," and a contact number valid throughout the U.S. which consumers can call to find out how and where to recycle the batteries. RBRC currently runs a nationwide collection and recycling program for nickel-cadmium batteries, in which consumers can call 1–800–8–BATTERY or visit the web site at *www.rbrc.com* to find local Ni-Cd drop-off locations. The Agency believes that the alternative labels will help alleviate consumer confusion about what to do with Ni-Cd batteries once they run out of power, and so empower consumers with practical recycling information.

ADDRESSES: The public docket for this notice is Docket F–98–ABLN–FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public 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. For information on accessing electronic copies of docket materials, see the "Supplementary Information" section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of battery labeling and the Battery Act, contact Susan Nogas, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–7251, nogas.sue@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Docket materials and other Battery Act-related information are available in electronic format on the Internet. Follow these instructions to access them.

WWW: http://www.epa.gov/epaoswer/osw/non-hw.htm#battery
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

Dated: August 26, 1998.

Michael H. Shapiro,

Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 98–25325 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–6165–5]

Notice of Proposed De Micromis Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Osage Metals Superfund Site, Kansas City, Kansas, Docket No. VII–98–F–0014

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Micromis Administrative Order on Consent, Osage Metals Superfund Site, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed de micromis administrative order on consent regarding the Osage Metals Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on August 11, 1998, and approved by the United States Department of Justice (DOJ) on September 11, 1998.

DATES: EPA will receive comments relating to the proposed agreement and covenant not to sue on or before October 22, 1998.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to *the Osage Metals Superfund Site Administrative Order on Consent, EPA Docket No. VII–98–F–0014.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas 66101, (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site ("Site"), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. Samples taken at the Site in 1994 found polychlorinated biphenyls ("PCBs") in surface soils at levels as high as 334 mg/kg, and lead contamination in levels as high as 56,000 mg/kg. The EPA approved a removal action at the Site on February 13, 1995, and began cleanup in March of 1995. EPA completed its work in October 1995. No further response action is anticipated.

As of May 31, 1998, EPA and DOJ had incurred costs in excess of $1.3 million exclusive of interest. EPA notified more than 750 parties of their potential liability for response costs incurred at the Site. EPA recovered $80,000 in 1996 and is seeking the remaining costs from parties who arranged for disposal of more than 200 pounds of capacitors or transformers contaminated with PCBs at the Site.

EPA has determined that any party who arranged for disposal of 200 pounds or less of capacitors or transformers contributed a *de micromis* volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Under the proposed agreement, each *de micromis* party will pay $0 (zero) in exchange for contribution protection and a covenant not to sue for past costs incurred at the Site.

Dated: September 14, 1998.

William Rice,

Deputy Regional Administrator, Region VII.

[FR Doc. 98–25326 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6165–4]

Notice of Proposed De Minimus Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Osage Metals Superfund Site, Kansas City, Kansas, Docket No. VII–98–F–0012

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Minimus Administrative Order on Consent, Osage Metals Superfund Site, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed de minimus administrative order on consent regarding the Osage Metals Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on September 10, 1998, and approved by the United States Department of Justice (DOJ) on September 11, 1998.

DATES: EPA will receive comments relating to the proposed agreement and covenant not to sue on or before October 22, 1998.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to *the Osage Metals Superfund Site Administrative Order on Consent, EPA Docket No. VII–98–F–0012.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site ("Site"), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. Samples taken at the Site in 1994 found polychlorinated biphenyls ("PCBs") in surface soils at levels as high as 334 mg/kg, and lead contamination in levels as high as 56,600 mg/kg. The EPA approved a removal action at the Site on February 13, 1995, and began cleanup in March of 1995. EPA completed its work in October 1995. No further response action is anticipated.

As of May 31, 1998, EPA and DOJ had incurred costs in excess of $1.3 million exclusive of interest. Each of the proposed settlors arranged for disposal of capacitors contaminated with PCBs by PCB Treatment, Inc. who in turn arranged for disposal at the Site of Scrap metal from capacitors.

EPA has determined that any party who arranged for disposal of between 206 and 89,387 pounds of capacitors contributed a *de minimus* volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Each settlor will pay a share of costs based on its volumetric share of capacitor weight compared to all capacitor weight with an additional premium of 15%.

Through this settlement, EPA will recover $182,000. EPA has recovered $80,000 through a consent decree with the former owner/operator and will seek the remaining costs from other potentially responsible parties at the Site.

Dated: September 14, 1998.

William Rice,

Deputy Regional Administrator, Region VII.

[FR Doc. 98–25327 Filed 9–21–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

September 16, 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 proposed and/or continuing information collections, 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 Commissions burden estimates; (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 October 22, 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 Les Smith Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Quick Form Application for Authorization in the Ship Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form Number: FCC 605.

Type of Review: New collection.

Respondents: Individuals or households; Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 170,000.

Estimate Time Per Response: 0.44 hours/respondent.

Total Annual Burden: 74,800 hours.

Total Annual Costs: $2,261,000 (approximately 29% of respondents will pay $45 filing fee + postage).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Needs and Uses: FCC 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent "look and feel" that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated application form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own form or schedule. FCC 605 will consist of a Main Form containing administrative information and a series of Schedules used to file technical information relating to a specific radio service.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

A draft of this form was included with **Federal Register** posting for the Notice of Proposed Rulemaking for ULS, 63 FR 16938 on April 7th, 1998. As a result of comments to that proposed rulemaking, revisions were made to the Form 605 which includes but are not limited to: added a schedule for changes to affect multiple call signs or file numbers used to submit global changes; eliminated use of the form for assignment of authorization; changed temporary authority to include GMRS; added a two letter purpose to main form instructions for Amateur Vanity; removed purpose code for Assignment of Authorization; added purpose codes for Duplicate and Administrative Update; eliminated the table of county listings from the instructions; added capability for entities to provide a sub-tin number; added Physician's Certification of Disability to the Amateur Schedule; eliminated Amateur Club, RACES and Military Recreation Station and Alien Amateur references from the form; and miscellaneous edits.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–25346 Filed 9–21–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held.

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: September 29, 1998.

PLACE: The FEMA Conference Operator in Washington, DC will arrange the teleconference. Individual interested in participating should fax a request including their telephone numbers to (202) 646–4596 no later than September 25, 1998.

TIME: 11:00 a.m. to 1:00 p.m., EST.

PROPOSED AGENDA:

1. Call to order.
2. Announcements.
3. Action on minutes of previous meeting.
4. Discussion of 1998 Annual Report.
5. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting on November 3, 1998.

Dated: September 16, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–25291 Filed 9–21–98; 8:45 am]

BILLING CODE 6718–04–P

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, DC 20573.

Matrix International Inc., 18406 Security Road, Houston, TX 77032, Officers: Tina Tassone-Colosimo, President; Bartholomeus Bernardus, Vice President

Oceanbridge International Freight Forwarders, 2855 Mangum, Suite 510, Houston, TX 77092, Roosevelt V. Elias, Sole Proprietor

Overseas Freight Forwarding and Consolidation Corp., 4 Lagoon Place, San Rafael, CA 94901, Officer: Marla McBride, President

Precision Worldwide Transport, Inc., 20411 Rt. 19, Suite 14, Cranberry, TWP, PA 16066, Officers: Michael R. Krebs, President; William J. Young, Vice President

Air-Sea Transport (Seattle) Ltd., 6947 Coal Creek Pkwy., Suite 206, Newcastle, WA 98059, Officer: Shuchin Wang, President

4 Seas International Shipping, Inc., 1919 N.W. 19th Street, Suite 204A, Ft. Lauderdale, FL 33311, Officers: Ricky Niemann, President; Yolanda Van Der Spek, Vice President

Project Logistic International, Inc. d/b/a/ P.L.I., 17420 S. Avalon Blvd., Carson, CA 90746, Officers: Lars Buchwardt, CEO; Susan St. Germain, Vice President.

Dated: September 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25218 Filed 9–21–98; 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 October 6, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. MST Investments, L.P., Toccoa, Georgia; to acquire the voting shares of First Banks, Inc., Carnesville, Georgia, and thereby indirectly acquire First Bank & Trust, Carnesville, Georgia.

Board of Governors of the Federal Reserve System, September 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25252 Filed 9–21–98; 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 October 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with Saint James Bancorporation, Lutcher, Louisiana, and thereby indirectly acquire Saint James Bank and Trust Company, Lutcher, Louisiana.

2. Regions Financial Corporation, Birmingham, Alabama; to merge with Bullsboro Bancshares, Inc., Newnan, Georgia, and thereby indirectly acquire The Bank of Newnan, Newnan, Georgia.

3. Regions Financial Corporation, Birmingham, Alabama; to merge with VB&T Bancshares Corp., Valdosta,

Georgia, and thereby indirectly acquire Valdosta Bank and Trust, Valdosta, Georgia.

4. Robinson Bancshares, Inc., Lenox, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Lenox, Lenox, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bugbee Family Limited Partnership, Quinter, Kansas; to become a bank holding company by acquiring 56.35 percent of the voting shares of Quinter Insurance, Inc., Quinter, Kansas, and thereby indirectly acquire First National Bank, Quinter, Kansas.

2. Central Bancshares, Inc., Cambridge, Nebraska; to acquire 100 percent of the voting shares of First Central Bank McCook, NA, McCook, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Financial Bankshares, Inc., Abilene, Texas; to acquire 100 percent of the voting shares of Cleburne State Bank, Cleburne, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Heritage Commerce Corp., San Jose, California; to acquire 100 percent of the voting shares of Heritage Bank East Bay (in organization), Freemont, California.

Board of Governors of the Federal Reserve System, September 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25253 Filed 9-21-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Monday, September 28, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25467 Filed 9–18–98; 3:20 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981–0154]

Dentists of Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 16, 1998), on the World Wide Web, at "http://www.fte.gov./os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has agreed to accept, subject to final approval, a proposed consent order settling charges that thirteen dentists, practicing in three municipalities in southern Puerto Rico, violated Section 5 of the Federal Trade Commission Act. The proposed consent agreement settles charges that these thirteen dentists that practice in Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, have fixed prices and concertedly refused to deal with the third-party payer selected for their region to provide services under Puerto Rico's Health Insurance Act of 1993.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order, or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any of the proposed respondents that the law has been violated as alleged in the complaint.

The Complaint

The complaint charges that thirteen dentists practicing in Juana Diaz, Coamo, and Santa Isabel, Puerto Rico, restrained competition among dentists by, among other things, combining or conspiring to fix the terms under which they would deal with payers and participate under Puerto Rico's program to provide health care services to the indigent (the "Reform"), and to boycott the Reform if their terms were not met. Their boycott denied services to thousands, and their concerted effort to raise the level of reimbursement is a *per se* illegal group boycott. The allegations set forth in the Commission's complaint are summarized below.

The Administration de Seguros de Salud ("ASES"), a public corporation, implements and administers the Reform. ASES has divided Puerto Rico into regions, soliciting for each region bids from payers to organize and provide services for beneficiaries. ASES currently selects one payer with which to contract per region. That payer then contracts with providers, including hospitals, physicians, pharmacies, and dentists.

After reviewing bids from several payers, ASES selected La Cruz Azul to administer the Southeast Region of the Reform beginning October, 1994. Initially the municipalities of Juana Diaz, Coamo, and Santa Isabel, with a combined population of 106,000 residents,were not included in the Reform, but ASES included them in the Southeast Region on December 20, 1995.

Beginning in September of 1995, many of the proposed respondents, in various combinations, sometimes including other dentists, met and discussed the impending expansion of the Southeast Region to Juana Diaz, Coamo, and Santa Isabel, and the terms and conditions under which they would agree to participate in the Reform. A letter was prepared to present to La Cruz Azul, stating opposition to certain terms and conditions, including the amount of payment, that they wanted increased. The respondents threatened a boycott of the Reform program if La Cruz Azul did not address their demand. During this period the proposed respondents constituted a majority of dentists engaged in the practice of dentistry in the municipalities of Juana Diaz, Coamo, and Santa Isabel.

The proposed respondents met with a representative of La Cruz Azul, and presented their letter with the terms and conditions under which they would participate in the Reform, including price terms, for which they sought higher reimbursement. During the meeting with La Cruz Azul, and while a representative of La Cruz Azul was not present, the proposed respondents discussed among themselves their response to the terms and conditions for participation in the Reform, and agreed to nearly identical responses. Each respondent provided La Cruz Azul written notice that the dentist would not participate in Reform under the terms offered by La Cruz Azul.

The proposed respondents communicated with both La Cruz Azul and the public that they would not accept patients under the Reform. The proposed respondents in Juana Diaz placed an advertisement in a newspaper notifying the public they would not participate, and some respondents conveyed their refusal to deal with the Reform in a radio interview.

When dentists from the city of Ponce advertised their willingness to accept Reform patients from Juana Diaz, Coamo, and Santa Isabel, proposed respondents sought to have the Colegio de Cirujanos Dentistas de Puerto Rico (the "Colegio") prohibit this advertising. The Colegio eventually found advertisements by one of the dentists from Ponce to be in violation of the Colegio's rules, and notified the dentist, who then stopped advertising directed to residents of Juana Diaz, Coamo, and Santa Isabel.

La Cruz Azul acceded to the proposed respondents' demand to raise the level of reimbursement of dental fees under the Reform. The proposed respondents then agreed to participate the Reform.

The proposed respondents have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described above.

The complaint charges that the conduct of the proposed respondents, by fixing the compensation upon which dentists would participate in the Reform, raised the cost of and limited access to dental services funded by the Reform, and thereby deprived the Commonwealth of Puerto Rico, payers, and consumers the benefits of competition among dentists.

The Proposed Consent Order

The proposed consent order would prohibit each of the proposed respondents from concertedly 1) negotiating on behalf of any other dentist with any payer or provider; 2) refusing to deal, boycotting, or threatening to boycott any payer or provider; or 3) determining any terms, conditions, or requirements upon which dentists will deal with any provider, including, but not limited to, terms of reimbursement.

Notwithstanding these provisions, however, the proposed consent order would not prevent any of the proposed respondents from operating, or participating in, legitimate arrangements. First, any of the proposed respondents, if operating through a "qualified risk-sharing joint arrangement," may enter agreements to provide dental services. Such arrangements cannot restrict the dentists' ability to participate in any other arrangements, and all participants in the arrangement must share substantial financial risk from their participation in the arrangement.

Second, any of the proposed respondents, if operating through a "qualified clinically integrated joint arrangement," may enter into agreements to provide dental services if they have provided the Commission with adequate prior notification. Such arrangements could not restrict participating dentists' ability to participate in other arrangements with payers, and the participating providers in the arrangement would have to participate in active and ongoing programs designed to control costs and ensure the quality of the services provided.

Part III of the proposed order would require that each proposed respondent distribute copies of the order and accompanying complaint, as well as certified Spanish translations, to each payer or provider, who at any time since January 1, 1995, has communicated any desire, willingness, or interest in contracting for dentists' goods and services.

Parts IV and V of the order impose certain reporting requirements in order to assist the Commission in monitoring compliance with the order.

The proposed consent order would terminate 20 years after the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–25302 Filed 9–21–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to grant a generic approval for "Voluntary Customer Surveys of 'Partners' of the Agency for Health Care Policy and Research." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), the Agency for Health Care Policy and Research invites the public to comment on this proposed information collection request to allow AHCPR to conduct surveys.

The Agency for Health Care Policy and Research will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995.

DATES: Comments on this notice must be received by November 23, 1998.

ADDRESSES: Written comments should be submitted to: Ruth A. Celtnieks, Reports Clearance Officer, AHCPR, 2101 E. Jefferson Street, Suite 500, Rockville, Maryland 20852–4908. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Voluntary Customer Surveys of 'Partners' of the Agency for Health Care Policy and Research"

In response to Executive Order 12862, the Agency for Health Care Policy and Research (AHCPR) plans to conduct voluntary customer surveys of "partners" to identify how well AHCPR is performing its functions with its partners and to use this information to determine the kind and quality of services they want and expect, their level of satisfaction with existing services, and to implement improvements where feasible and practical. AHCPR partners are typically payers, plans, practitioners and health care providers, researchers, AHCPR suppliers and in some cases State and local governments or persons or entities that provide service to the public for AHCPR, e.g., a middle man.

Partner surveys to be conducted by AHCPR may include, for example, surveys of grantees to measure satisfaction with technical assistance received from AHCPR. Results of these surveys will be used to assess and redirect resources and efforts needed to improve services.

In addition, approval is requested for customer surveys that would be undertaken by one of AHCPR's "partners" (grantees) to assess their satisfaction with services received. For example, the AHCPR's Office of Research Review, Education, and Policy (ORREP) provides grant funds for training of health services researchers. AHCPR would like to survey scholars whose training it has supported regarding their training experience. The Office for Health Care Information (OHCI) is proposing to survey one component of their customers: researchers. This proposed survey will be undertaken by a contractor to determine how AHCPR could better serve the research community. Questions asked may include a need for extended hours to answer inquiries on grant submission-related matters or the development of a comprehensive manual on grant submission.

Method of Collection

The data will be collected using a combination of preferred methodologies appropriate to each survey. These methodologies are:

- Mail surveys;
- Evaluation forms; and
- Telephone surveys.

The estimated annual burden is as follows:

Type of survey	Number of respondents	Average burden/response	Total hours of burden
Mail/Telephone Surveys	3,000	20 minutes	1,000
Focus Groups	200	1.5 hours	300
Totals	3,200	.41 hours	1,300

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection for the proper performance of the functions 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collections plans can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: September 14, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–25223 Filed 9–21–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Chronic Fatigue Syndrome Coordinating Committee (CFSCC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Chronic Fatigue Syndrome Coordinating Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period beginning September 5, 1998, through September 5, 2000.

For further information, contact Lisa Blake-DiSpigna, Executive Secretary,

CFSCC, CDC, 1600 Clifton Road, NE, M/S C19, Atlanta, Georgia 30333, telephone 404/639–3227, fax 404/639–4138.

Dated: September 16, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25247 Filed 9–21–98; 8:45 am]

BILLING CODE 4861–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Chronic Fatigue Syndrome Coordinating Committee: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Chronic Fatigue Syndrome Coordinating Committee (CFSCC).

Time and Date: 9 a.m.–5 p.m., October 13, 1998.

Place: Hyatt Regency Hotel, Dawes Room, 575 Memorial Drive, Cambridge, Massachusetts 02139–4896, telephone 617/492–1234, fax 617/441–6489.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 145 people.

Purpose: The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased Department of Health and Human Services (HHS) and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and education; and developing informed responses to constituency groups regarding HHS and SSA efforts and progress.

Matters to be Discussed: Agenda items will include updates from HHS agencies; recruiting new investigators into the field of CFS and initiating drug trials in CFS; priority areas arising from the American Association for Chronic Fatigue Syndrome Conference; and CFSCC discussion on an annual report for CFS.

Agenda items are subject to change as priorities dictate.

Public comments will be received at the meeting for approximately 60 minutes. Public statements presented at this meeting should not be repetitive of previously submitted oral or written statements. Persons wishing to make oral comments should notify the contact person listed below no later than close of business on October 8, 1998. All requests to make oral comments should contain the name, address, telephone number, subject area, and organizational affiliation of the presenter. These comments will become a part of the official record of the meeting. Due to the time available, public comments will be limited to five minutes per person. Copies of any written comments should be provided at the meeting; please provide at least 145 copies.

Contact Person for More Information: Lisa Blake-DiSpigna, Executive Secretary, CFSCC, CDC, 1600 Clifton Road, NE, M/S C19, Atlanta, Georgia 30333, telephone 404/639–3227, fax 404/639–4138.

Dated: September 16, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25248 Filed 9–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Refinancing Loan Application/ Promissory Note; New—

The HEAL program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, or allied health, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, State agencies, and HEAL schools, make HEAL loans which are insured by the Federal Government against loss due to the borrower's death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs.

A new combined HEAL refinancing loan application/promissory note has been developed for lenders. Previously, the standard HEAL student application form (HRSA–700) and promissory note (HRSA 500–3) were used by lenders to process the loan refinancing. The application contained items that were not needed for refinancing loans, and the Department has since developed an official combined form.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Applicants	2,800	1	2,800	12	560
Lenders	9	311	2,800	30	1,400
Total	2,809		5,600		1,960

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 16, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–25273 Filed 9–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps—A Uniform Data System; New

This is a request for approval to authorize the National Health Service Corps (NCHS), Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA) to implement a modified version of the existing BPHC Universal Data System (OMB No. 0915–0093) to collect data from BPHC non-grant supported sites (NHSC Free Standing Sites) in response to Federal mandates for reports and in suppport of efficient and effective program management.

The National Health Service Corps (authorized by Public Health Service Act, Section 331) needs to collect data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The NHSC will provide data on services, staffing, and financing. Each site will be asked to provide information on the following: services offered and delivery method; users by various characteristics; staffing and utilization; charges and collections; receivables, income and expenses; and, managed care.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Report	620	1	27	16,740

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 16, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–25274 Filed 9–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for Certain Medicare+Choice Organizations

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties into the OIG's development of a compliance program guidance for Medicare+Choice organizations that offer coordinated care plans (M+CO/CCPs). The OIG has previously developed compliance program guidances for hospitals, clinical laboratories and home health agencies in order to provide clear and meaningful guidance to those segments of the health care industry. In an effort to provide similar guidance to certain M+C organizations, we are soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to develop compliance program guidance and reduce fraud and abuse within M+CO/CCPs.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on November 23, 1989.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–4–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–4–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5527 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Susan Lemanski, Office of Counsel to the Inspector General, (202) 619–2078, or Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance has become a major initiative of the OIG in its effort to engage the private health care community in addressing and fighting fraud and abuse. Recently, the OIG has developed and issued compliance program guidance directed at various segments of the health care industry.[1] The guidance is designed to provide clear direction and assistance to specific sections of the health care industry that are interested in reducing and eliminating fraud and abuse within their organizations.

Compliance Program Guidance for Medicare+Choice Organizations

Representatives of the managed care industry have expressed an interest in better protecting their operations from fraud and abuse. It is likely that the establishment of the new Medicare+Choice program will

[1] 63 FR 8987 (February 23, 1998) for hospitals; 63 FR 42410 (August 7, 1998) for home health agencies; and 63 FR 45076 (August 24, 1998) for clinical laboratories. The guidances can also be found on the OIG web site at http://www.dhhs.gov/progorg/oig.

significantly expand the health care options available to Medicare beneficiaries and result in a greater number of beneficiaries enrolling in so-called "managed care" plans than ever before. Therefore, we believe that it is crucial that the organizations offering these plans have effective compliance programs in place. In fact, one of the conditions necessary to contract with the Health Care Financing Administration (HCFA) as an M+C organization is that the organization must "have administrative and management arrangements satisfactory to HCFA," including a compliance program that consists of specified elements (42 CFR 422.501(b)(3)(vi)). These elements are similar to the elements the OIG has identified in its previous compliance program guidances.

The OIG has determined that it would be appropriate to issue compliance program guidance for a subset of M+C organizations, i.e., those that offer coordinated care plans. As defined by the HCFA in 42 CFR 422.4(a)(1), a CCP is "a plan that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by HCFA," and includes "health maintenance organizations (HMOs), provider-sponsored organizations (PSOs), preferred provider organizations (PPOs), religious and fraternal benefit and other network plans (except network MSA plans)." *Id.*

Voluntary in Nature

Compliance program guidance represents the OIG's suggestions on how entities can best establish internal controls and monitoring to correct and prevent fraudulent activities. The contents of the guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program. While the elements that the OIG considers necessary for a comprehensive compliance program are similar to the elements HCFA has included in its conditions to contract as an M+C organization, the planned guidance is intended to present voluntary guidance to the industry, and not represent binding standards for M+CO/CCPs.

Areas for Comment and Input in Developing This Guidance

We are seeking, through this **Federal Register** notice, formal input from all interested parties as the OIG begins developing compliance program guidance directed at M+CO/CCPs. The OIG will give consideration to all comments, recommendations and suggestions submitted and received by the time frame indicated above.

We anticipate that the M+CO/CCP guidance will contain the seven elements that we consider necessary for a comprehensive compliance program. These seven elements have been discussed in our previous guidances and include:

- The development of written policies and procedures;
- The designation of a compliance officer and other appropriate bodies;
- The development and implementation of effective training and education;
- The development and maintenance of effective lines of communication;
- The enforcement of standards through well-publicized disciplinary guidelines;
- The use of audits and other evaluation techniques to monitor compliance; and
- The development of procedures to respond to detected offenses and to initiate corrective action (including reporting to appropriate governmental authorities)

We would appreciate specific comments, recommendations and suggestions on (1) risk areas for the M+CO/CCPs, and (2) aspects of the seven elements contained in previous guidances that may need to be modified to reflect the unique characteristics of M+CO/CCPs. Detailed justifications and empirical data supporting suggestions would be appreciated. We are also hopeful that any comments, recommendations and input be submitted in a format that addresses the above topics in a concise manner, rather than in the form of comprehensive draft guidance that mirrors previous guidance.

Dated: September 11, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–25224 Filed 9–21–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in September 1998.

The meeting will include the review, discussion and evaluation of individual grant applications and contract proposals. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: September 18, 1998.

Place: The Center for Substance Abuse Prevention, 5515 Security Lane, Rockwall II Building, 9th Floor, Room 901, Rockville, Maryland 20852.

Closed: September 18, 1998, 1:00 p.m. to 3:00 p.m.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: September 16, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–25276 Filed 9–21–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to OMB for reinstatement under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements and explanatory material may be obtained by contacting the Fish and Wildlife Service's (Service) Information Collection Clearance Officer at the address or phone number listed below.

DATES: Consideration will be given to all comments received on or before October 22, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849

C Street, NW, Washington, D.C. 20240, Telephone 703/358–2287.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, Arlington, Virginia, at 703/358–1718.

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection clearance requirements to the Office of Management and Budget (OMB) for review and reinstatement of OMB Control Number 1018–0070 under the Paperwork Reduction Act of 1995, Public L. 104–13. The OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, the OMB should receive public comments by October 22, 1998. The Service 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. A 60-day notice inviting public comment on this information collection requirement previously was published in the **Federal Register** on April 1, 1998 (63 FR 15854). No comments on the previous notice were received. Pursuant to this request for approval, comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) 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.

Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972 authorizes the Service to allow the incidental, unintentional take of small numbers of marine mammals during a specified activity (other than commercial fishing) in a specified geographical region. Prior to allowing these takes, the Service must find that the total of such taking will have a negligible impact on the species or stocks, and will not have an unmitigable adverse impact on the species or stocks for subsistence uses by Alaska Natives.

The information proposed to be collected by the Service will be used to evaluate applications for specific incidental take regulations to determine whether such regulations, and subsequent Letters of Authorization (LOA), should be issued; the information is needed to establish the scope of specific incidental take regulations. The information is also required to evaluate the impact of activities on the species or stocks of the marine mammals, and on their availability for subsistence uses by Alaskan Natives. It will ensure that all available means for minimizing the incidental take associated with a specific activity are considered by applicants.

The Service estimates that the burden associated with this request will be a total of 1,100 hours for the full three year period of OMB authorization. Two-hundred hours will be required to complete the initial request for specific regulations. For each LOA expected to be requested and issued subsequent to issuance of specific regulations, the Service estimates that 20 hours will be invested: 8 hours will be required to complete each request for an LOA, 4 hours will be required for monitoring activities, and 8 hours will be required to complete each monitoring report. The Service estimates that five companies will be requesting LOAs and submitting monitoring reports annually for each of three sites in the region covered by the specific regulations.

Title: Marine Mammals; Incidental Take During Specified Activities.

Bureau form number: None.

Frequency of collection: Biannually.

Description of respondents: Oil and gas industry companies.

Number of respondents: 5 for each of 3 active sites per year.

Estimated completion time: For the initial year only, a 200 hour application burden is estimated. For the initial year and annually thereafter, 8 hours per LOA, 4 hours for monitoring, and 8 hours per monitoring report are estimated for each of 5 companies for each 3 active sites (20 hours × 5 companies × 3 sites).

Burden estimate: 200 hours (only in initial year for application). 300 hours (for initial year and annually thereafter).

Dated July 30, 1998.

Hannibal Bolton,

Acting Assistant Director-Fisheries.

[FR Doc. 98–25310 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to review the 1998 Klamath chinook salmon fishing season and plan for fishery management in 1999. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 2:00 p.m. to 5:00 p.m. on Wednesday, October 7, 1998; from 9:00 a.m. to 5:00 p.m. on Thursday, October 8, 1998; and from 8:00 a.m. to 12:00 p.m. on Friday, October 9, 1998.

PLACE: The meeting will be held at the Ship Ashore Resort, 12370 Highway 101 North, Smith River, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 15, 1998.

Cynthia U. Barry,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 98–25244 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec.

14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Sitnasuak Native Corporation for approximately 1,124 acres. The lands involved are in the vicinity of Nome, Alaska, further described as Sec. 31, T. 10 S., R. 31 W.; Sec. 12, T. 11 S., R. 32 W., Kateel River Meridian; and Lot 40, U. S. Survey No. 4107, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 22, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–25251 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–08–1150–00–P]; UTU–76388

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following described public lands in Beaver County, Utah have been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Amendment Act of 1988 (Pub. L. 100–648). The land to be conveyed and the proposed patentee are as follows: *Patentee:* Minersville Town. *Location:* Salt Lake Meridian, Utah, Township 30 South, Range 10 West, Section 3, W½SE¼SE¼, S½S½NE¼SE¼, containing 30 acres.

These lands are hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

The Town of Minersville proposes to use the land for the expansion of the town's sewage lagoons. The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. The Secretary of Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation, and maintenance of the sewage lagoons.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid existing rights.

4. The patentees assume all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly to the disposal of solid waste on, or the release of hazardous substances from the above listed tracts, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Title shall revert to the United States upon a finding, after notice and opportunity of a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal, or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

DATES: Interested persons may submit comments regarding the proposed conveyance of the land to the District Manager, Cedar City District Office, 176 D.L. Sargent Drive, Cedar City, Utah 84720. Comments will be accepted until November 6, 1998.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for construction of sewage lagoons.

Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of Interior on November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Beaver River Resource Area office by contacting Ervin Larsen, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, or telephone (435) 865–3081.

Dated: September 14, 1998.

Arthur L. Tait,

District Manager.

[FR Doc. 98–25283 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

Final Environmental Impact Statement; P140 Coaxial Cable Removal Project, Socorro, New Mexico to Mojave, CA, Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L.91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service (lead agency) and Bureau of Land Management (cooperating agency) prepared an abbreviated Final

Environmental Impact Statement (FEIS) for AT&T's P140 Coaxial Cable Removal Project. The no-action period commenced May 29, 1998 with the U.S. Environmental Protection Agency's **Federal Register** notice of FEIS filing. Final approval of the Record of Decision (ROD) occured on August 17, 1998.

Decision: The National Park Service and Bureau of Land Management will monitor and evaluate implementation of Alternative A (identifed as the preferred alternative in the Final Environmental Impact Statement issued in May 1998). AT&T will initiate activities encompassed in the selected alternative as soon as practical. This option and three other alternatives were detailed and analyzed in the Final and Draft Environmental Impact Statements (latter issued in December, 1997).

Approval: The Record Of Decision (ROD) was jointly approved as follows: National Park Service—John Reynolds, Pacific West Regional Director (August 5); Bureau of Land Management—Tim Salt, Acting District Manager, Riverside, California (August 14); Robert Abbey, State Director, Nevada (August 17); Michelle Chavez, State Director, New Mexico (August 10). The ROD was reviewed by the Director, Office of Environmental Policy and Compliance, Department of the Interior.

Copies of the approved ROD may be obtained either from: Superintendent, Mojave National Preserve, 222 E. Main St. ι202, Barstow, CA 92311; BLM Las Vegas Field Office, 4765 W. Las Vegas Dr., Las Vegas, NV; BLM Socorro Resource Area, 198 Neel Ave, NW, Socorro, NM; or from the Project Manager, AT&T Cable Removal, EIS Pkg. D176–15A 21, Denver Service Center, National Park Service, P. O. Box 25287, Denver, CO 80225–0287.

Dated: September 8, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–25296 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jimmy Carter National Historic Site; Notice of Advisory Commission Meeting

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4:00 p.m., at the following location and date.

DATE: October 20, 1998.

LOCATION: The Windsor Hotel, Dayton Room, Americus, Georgia 31709.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711; (912) 924–0343 Extension 105.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Henry King Stanford
Dr. James Sterling Young
Dr. Barbara J. Fields
Dr. Donald B. Schewe
Dr. Steven H. Hochman
Director, National Park Service, Ex-Officio member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: September 8, 1998.

Daniel W. Brown,

Regional Director, Acting Southeast Region.

[FR Doc. 98–25297 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Mojave National Reserve; Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held September 28 and 29, 1998; assemble at 9:00 AM at the Hole-in-the-Wall Visitor Center, Mojave National Preserve, California.

The agenda: Staffing and Funding, Presentation of the General Management Plan, and Other Planning.

The Advisory Commission was established by Pub. L. 103–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are:

Micheal Attaway
Irene Ausmus
Rob Blair
Peter Burk
Dennis Casebier
Donna Davis
Kathy Davis
Nathan "Levi" Esquerra
Gerald Freeman
Willis Herron
Eldon Hughes
Claudia Luke
Clay Overson
Norbert Riedy
Mal Wessel

This meeting is open to the public.

Mary G. Martin,

Superintendent, Mojave National Preserve.

[FR Doc. 98–25300 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of National Landmarks Committee of National Park System Advisory Board

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATES: October 7, 1998.

LOCATION: Main Hearing Room, First Floor, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on October 20, 1998, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria for designation for the National Historic Landmarks Program. The members of the National Landmarks Committee are:

Dr. Holly Anglin Robinson, Co-Chair
Mr. Parker Westbrook, Co-Chair

Mr. Peter Dangermond
Dr. Shereen Lerner
Dr. Warren C. Riess
Mr. Jerry L. Rogers
Dr. John Vlach
Dr. Richard Guy Wilson
Dr. James Horton, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65. Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey, and Keeper of the National Register of Historic Places, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Washington, DC 20013–7127.

The nominations to be considered are:

California
Mission Santa Ines, Solvang
Illinois
Grosse Point Light Station, Evanston
Massachusetts
Symphony Hall, Boston
Maryland
Thomas Point Shoals Light Station, Anne Arundel County
Montana
Chief Plenty Coups (Alek-Chea-Ahoosh), Home, Big Horn County
New York
Harmony Mills, Cohoes Petrified Sea Gardens, Saratoga Springs
North Carolina
Bethabara, Winston-Salem
Oklahoma
Boston Avenue Methodist Episcopal Church, Tulsa Guthrie Historic District, Guthrie
Oregon
Astoria Column, Astoria
Pennsylvania
Bost Building, Homestead Friends Hospital, Philadelphia Homestead Battle Site, Allegheny County Moland House, Bucks County

Also, should the necessary waivers be received, the committee will be considering three additional properties:

Tomek House, Riverside, Illinois
John Coltrane House, Philadelphia, Pennsylvania
Fort Corchaug Archeological Site, Cutchogue, New York

The committee will also consider the following de-designation:

Roosevelt Dam, Gila and Maricopa Counties, Arizona

Dated: September 14, 1998.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Park Service, Washington Office.

[FR Doc. 98–25217 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

San Francisco Maritime National Historical Park Advisory Commission; Meeting

Agenda for the October 7, 1998 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting

Presidio Golden Gate Club

10:00 am–12:15 pm

10:00 am
Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman, William Thomas, Superintendent
10:15 am
Update—General Management Plan, Phase II Implementation, William Thomas
10:30 am
Update—Haslett Warehouse, William Thomas, Superintendent, Steve Crabtree
10:45 am
Update—SAFR Space needs for: Haslett Warehouse, Building E, Space Update: Alameda Building Leasing Project
Status—Port of Oakland, Bay Ship & Yacht, Dry-dock, Tom Mulhern, Museum Services Manager
11:00 am
Status—Ship Preservation Update, Wayne Boykin, Ships Manager & Staff
11:30 am
Update—Disaster Plan
Status—Comprehensive Interpretive Plan, Marc Hayman, Chief IRM
11:45 pm
Update—National Maritime Museum Association Projects, Kathy Lohan, Chief Executive Officer
12:00 pm
Public Comments and Questions
12:15 pm
Agenda items/Date for next meeting.

Michael R. Bell,

Acting Superintendent.

[FR Doc. 98–25295 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability, Plan of Operations for Access to a Mining Claim Outside Joshua Tree National Park

INTRODUCTION: Notice is hereby given in accordance with section 9.17 (a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from the "First Class Miners Club" a proposed Plan of Operations for access through the park to mining claims outside the park.

SUMMARY: The group proposes 100 personal vehicle trips per year on park surfaced and unsurfaced roads.

The National Park Service will conduct an Environmental Assessment of the potential impacts of the proposed operation on vegetation, wildlife, air , water, cultural and scenery resources.

SUPPLEMENTARY INFORMATION: Copies of the proposed Plan are available upon request from: Superintendent, Joshua Tree National Park, 74485 National park Drive, Twentynine Palms, California, 92277.

Dated: September 9, 1998.

Chris Holbeck,

Resource Management Specialist.

[FR Doc. 98–25298 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 12, 1998. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 7, 1998.

Carol D. Shull,

Keeper of the National Register.

Alabama

Montgomery County

Alabama State University Historic District, 915 S. Jackson St., Montgomery, 98001228

California

Los Angeles County

Stuart Company Plant and Office Building, 3360 E. Foothill Blvd., Pasadena, 94001326

Santa Clara County

Agnews Insane Asylum (Boundary Increase), 4000 Lafayette St., Santa Clara vicinity, 98001229

Florida

Palm Beach County

Clematis Street Historic Commercial District, 500 Blk. of Clematis St., West Palm Beach, 98001230

Maine

Hancock County

St. Edward's Convent, (Former); 33 Ledgelawn Ave., Bar Harbor, 98001237

Knox County

Gushee Family House, 2868 Sennebec Rd., Appleton, 98001235

Lincoln County

Damariscotta Shell Midden Historic District, Address Restricted, Damariscotta vicinity, 98001238

Somerset County

Moose River Congregational Church, Jct. of ME 201 and Nichols Rd., Jackman vicinity, 98001234

York County

Harper Family House, ME 5, approx .95 mi. S of jct. of E. Range Rd. and ME 5, Limerick vicinity, 98001236

Paul Family Farm (Eliot, Maine MPS), 106 Depot Rd., Eliot vicinity, 98001232

Smith—Emery House, 253 Main St., Springvale, 98001233

Maryland

Washington County

Lantz—Zeigler House, 21000 Leitersburg Pike, Hagerstown vicinity, 98001231

Missouri

Jackson County

Crestwood Historic District, Roughly bounded by Oak St., the jct. of Cherry and Locust Sts., Holmes St., and 56th St., Kansas City, 98001239

New York

Schuyler County

Weston Schoolhouse, 463 Cty Rte 23, Weston, 98001241

North Carolina

Robeson County

Baker Sanatorium, Jct. of 14th and Chestnut Sts., Lumberton, 98001240

[FR Doc. 98–25225 Filed 9–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Coastal Eagle Point Oil Co. et al.*, Civil Action No. 98–3995 (JHR) (D. N.J.) was lodged with the United States District Court for the District of New Jersey on August 25, 1998.

In this action the United States sought civil penalties under the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, against Coastal Eagle Point Oil Co., Eagle Point Cogeneration Partnership, and Coastal Technology, Inc., ("Coastal"). The alleged violations include certain violations at a boiler plant and cogeneration plant within a petroleum refinery located in West Deptford Township, New Jersey. The consent decree resolves these claims.

The consent decree requires Coastal to comply with the Clean Air Act; to pay a civil penalty to the United States of $300,000; and to implement a supplemental environmental project ("SEP") at an estimated cost of $960,000. The SEP requires Coastal to install and operate an Amine Scrubber Unit in the refinery fuel gas system supply the boiler and cogeneration plants. The Amine Scrubber Unit shall be capable of operating in conjunction with other existing fuel gas treatment units to control the hydrogen sulfide (H_2S) concentration of the refinery fuel gas supplied to the boiler and cogeneration plants.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Coastal Eagle Point Oil Co. et al.* (D. N.J.), DJ #90–5–2–1–2063.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Cohen Courthouse, One Gerry Plaza, Room 2070, Camden, New Jersey 08101; at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, NW., 3d Floor, Washington, DC 20005. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $6.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–25285 Filed 9–21–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on August 18, 1998, a proposed Partial Consent Decree in *United States* v. *Estate of J.M. Taylor, et al.*, Civ. No. C–89–231–R, was lodged with the United States District Court for the Middle District of North Carolina. This Consent Decree concerns the Aberdeen Pesticides Dumps Superfund Site in Aberdeen, North Carolina. Under this proposed Consent Decree, defendant Farm Chemicals, Inc. will pay $300,000 in partial reimbursement of the United States' response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC., 20044, and should refer to *United States* v. *Estate of J.M. Taylor, et al.*, D.J. Ref. 90–11–3–323.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Middle District of North Carolina, 101 South Edgeworth, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, Environmental Accountability

Division, 61 Forsyth Street, SW, Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC. 20005. Please refer to the referenced case. There is a photocopying charge of $10.00 ($0.25 per page). Please enclose a check for that amount made payable to "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–25286 Filed 9–21–98; 8:45 am]

BILLING CODE 4410–16–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1928–98]

Direct Mail of Requests for Employment Authorization Documents Filed by Dependents of Nonimmigrants Classified as A, G or NATO

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs the diplomatic and NATO community that applications related to employment authorization for the dependents of A, G, and NATO nonimmigrants, will be filed at the Nebraska Service Center.

DATES: This notice is effective September 22, 1998.

FOR FURTHER INFORMATION CONTACT:

Katharine Auchincloss-Lorr, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

What Does This Notice Do?

This notice advises the diplomatic and NATO community that, upon the publication of this notice and under the direct mail program, an application for an employment authorization document (EAD) filed by the dependent of an A, G, or NATO nonimmigrant should be mailed to the Nebraska Service Center. If these EAD applications are filed with a local Service office, the application will be forwarded to the Nebraska Service Center for processing.

How Are EADs Currently Processed for These Dependents?

Applications for EADs made by the dependents of A and G nonimmigrants have been adjudicated at local Service district offices. Applications for EADs made by NATO dependents have been processed both locally and by the Vermont Service Center. Each office has had its own processes and procedures.

Why is the Service Taking This Action?

Submitting applications for EAD to the Nebraska Service Center will allow the Service to provide more timely and efficient processing of these applications. This decision was made after an extended Pilot Program in which the Department of State (DOS), and the United States Mission to the United Nations (USUN), were satisfied that the Nebraska Service Center could process these applications in a timely manner.

How Will A, G, and NATO Nonimmigrants be Notified of This Change?

The Office of Protocol, DOS has advised the diplomatic community of these new procedures by circular diplomatic note. The USUN has advised members of the United Nations diplomatic community in New York of these changes. NATO's Supreme Allied Commander, Atlantic (SACLANT) will be notifying the NATO community of this change.

When Will This Begin?

Effective August 27, 1998, requests for EADs submitted by dependents of A and G nonimmigrants will be forwarded directly by the DOS, Office of Protocol or the USUN, to the Nebraska Service Center. Requests for EADs submitted by dependents of NATO nonimmigrants will be forwarded by NATO SACLANT to the Nebraska Service Center.

What Forms and Documents Have to be Included by A, G, and NATO Dependents When Submitting Requests for EAD Through the DOS and USUN?

As contained in Service regulations at 8 CFR 214.2(a)(6) and 214.2(g)(6), on the instructions to the Form I–566, Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G status; or Requesting A, G or NATO Dependent Employment Authorization, Form I–765, Application for Employment Authorization, and as provided in DOS and USUN's circular diplomatic note, the following forms and documents must be submitted to DOS and USUN:

(1) The completed Form I–566, and a diplomatic note requesting employment authorization, accompanied by the employer's offer of employment when required under the terms of de facto arrangements (such a statement must identify the dependent by name, describe the position and salary offered, detail the duties of the position, and verify that the dependent possesses the qualifications of the position);

(2) A completed Form I–765 signed by the applicant;

(3) Two color photographs with the name of the applicant and the mission on the back of each;

(4) A clear photocopy of the applicant's photograph as it appears in his or her passport, machine readable visa, State Department identification document, or other acceptable identity document issued by the sending State or the United States Government; and

(5) A copy of the Form I–94, Arrival and Departure Record (front and back).

Application procedures for NATO dependents requesting EADs are provided in the amended NATO regulation published on June 12, 1998, in the **Federal Register** (Volume 63, Number 113, pages 32113–32117), effective August 12, 1998, at 8 CFR 214.2(s)(5), on Form I–765, and on the Form I–566.

If requesting an extension or reapplying for an EAD, photocopies of IRS tax returns for previous years that the A, G, and NATO dependent worked in the United States must be provided.

The Nebraska Service Center will direct concerns regarding the sufficiency of an application to the embassy or international organization at the address in the address block of the Form I–765 or, in the case of the United Nations diplomatic community, to the USUN, or in the case of NATO nonimmigrants, to SACLANT.

Will There be a Filing Fee Required for the EAD Application?

There is no EAD application filing fee for dependents of A, G, and NATO nonimmigrants.

Are Fingerprints Required With the EAD Application?

Based on treaty and statutory obligations, fingerprints are not required for dependents of A and G nonimmigrants. The submission of fingerprints is also not required for NATO dependents but is encouraged for EAD card purposes.

What is the Mailing Address for the Nebraska Service Center?

U.S. INS Nebraska Service Center, PO Box 87526, Lincoln, NE, 68501–7526.

Dated: September 9, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–25270 Filed 9–21–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of a Currently Approved Collection; National Prisoner Statistics Midyear Counts and National Prisoner Statistics Advance Year-end Counts.

Office of Management and Budget approval is being sought for the information collections listed below. These proposed collections were previously published in the **Federal Register** on April 10, 1998, allowing for a 60-day public comment period. Two comments were received by the Bureau of Justice Statistics. Changes were performed where appropriate.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 22, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collections of information should address one or more of the following four points;

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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 submissions of responses.

Overview of this Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the Forms/Collections:* National Prisoner Statistics Midyear Counts and National Prisoner Statistics Advance Year-end Counts.

(3) *Agency form numbers, if any, and the applicable component of the Department of Justice sponsoring the collection:* NPS–1A&B. Bureau of Justice Statistics.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Federal, State, and Local or Tribal Government. The National Prisoner Statistics–1A (midyear collection) provides information on the number of persons in State and Federal correctional facilities with maximum sentences of more than 1 year, less than 1 year, or no sentence. It also reports on racial composition, number of inmates under age 18, and number of inmates who were not citizens of the United States. The NPS–1B (advance year-end collection) provides information on the number of inmates under the jurisdiction and the number of inmates under the custody of Federal and State authorities, as well as data on prison capacity and crowding. No other data collections provide these counts. These programs make it possible to track prisoner growth at the jurisdictional level.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* Fifty-two respondents each take an estimated 1 hour and 15 minutes to complete the NPS–1A for and 1 hour and 30 minutes to complete the NPS–1B form.

(6) *An estimate of the total public burden (in hours) associated with the collection.* One hundred forty-three annual burden hours.

If you have additional comments, suggestions, or need copies of the proposed information collection instruments with instructions, or additional information, please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information management and Security staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25222 Filed 9–21–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 15, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5906 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB 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 estimate of the burden of 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 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.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan.

OMB Number: 1215–0119 (extension).

Agency Number: None.

Frequency: Recordkeeping only.

Affected Public: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 2.072 million.

Total Responses: 2.072 million.
Estimated Time per Respondent: Recordkeeping only.
Total Burden Hours (recordkeeping): 1.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA) permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide thrift or savings plan. Regulations require that information necessary to support a thrift or saving plan's qualifications as a bona fide plan, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations, 29 CFR Part 547 set forth the requirements for a bona fide thrift or savings plan. This recordkeeping requirement enables investigators to determine whether or not a given thrift or savings plan is in compliance with the FLSA.

Agency: Employment Standards Administration.
Title: Requirements of a Bona Fide Profit-Sharing Plan or Trust.
OMB Number: 1215–0122 (extension).
Agency Number: None.
Frequency: Recordkeeping only.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.
Number of Respondents: 888,000.
Estimated Time Per Respondent: Recordkeeping only.
Total Burden Hours: 1.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA) permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide profit-sharing plan or trust. Regulations require that information necessary to support a profit-sharing plan or trust's qualifications as a bona fide plan or trust, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations 29 CFR Part 549 set forth the requirements for a bona fide profit-sharing plan or trust. This recordkeeping requirement enables investigators to determine whether or not a given profit-sharing plan or trust is in compliance with the FLSA.

Agency: Employment Standards Administration.
Title: OFCCP Complaint Form.
OMB Number: 1215–0131 (extension).
Agency Number: CC–4.
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 1,150.
Estimated Time Per Respondent: 1.28 hours.
Total Burden Hours: 1,472.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $402.50.
Description: The Office of Federal Contract Compliance Programs (OFCCP) administers three equal employment opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212, the Vietnam Era Veterans Readjustment Assistance Act. These programs require affirmative action by Federal contractors and subcontractors and prohibit discrimination on the basis of race, color, sex, religion, national origin, disability, or veteran status. All three programs give individuals the right to file complaints. The CC–4 Complaint Form is used to file complaints under all three programs. The form is used as the first step in the initiation of a complaint investigation.

Agency: Employment Standards Administration.
Title: Application of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the U.S. Department of Labor.
OMB Number: 1215–0171 (extension).
Agency Number: CM–972.
Frequency: As needed.
Affected Public: Businesses or other for-profit.
Number of Respondents: 1,000.
Estimated Time Per Respondent: 42 minutes.
Total Burden Hours: 700.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Individuals filing for benefits under the Black Lung Benefits Act may elect to be represented or assisted by an attorney or other representative. The fee charged by the representative must be approved for payment by the Division of Coal Mine Worker's Compensation. Regulation 20 CFR 725.365–6 establishes certain information and documentation criteria which must be submitted in order for the Program to evaluate the fee request. This form provides a standardized format for submission of the information required by the regulation.

Agency: Bureau of Labor Statistics.
Title: Consumer Expenditure Quarterly Interview and Diary Surveys.
OMB Number: 1220–0050 (extension).
Agency Number: CE–301, CE–302, CE–300, CE–305, CE–303, CE–383, CE–801, CE–802, CE–803, CE–880.
Frequency: Quarterly Interview Survey respondents are interviewed quarterly for five consecutive quarters (four times in any one year). Diary Survey respondents complete two consecutive weekly reports.
Affected Public: Individuals or households.
Number of Respondents: 18,108.
Estimated Time Per Respondent: 87.7 minutes.
Total Burden Hours: 98,779.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to periodically update the national Consumer Price Index. In addition, the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from national probability sample of households designed to represent the total civilian non-institutional population.

Todd R. Owen,
Departmental Clearance Officer.
[FR Doc. 98–25264 Filed 9–21–98; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Reopening and Extending the Time for Receipt of Nominations for Vacancies Until October 30, 1998

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be

representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carry out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 1998. The groups or fields they represented are as follows: employee organizations (multiemployer plans), accounting field, insurance field, employers and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW, Suite N–5677, Washington, DC 20210. This notice is being issued to reopen and further extend the period in which recommendations can be delivered or mailed. The new date for receipt of recommendations is on or before October 30, 1998. Nominations for a particular category of membership should come from organizations on individuals within the category. A summary of the candidate's qualifications should be included with the nomination.

Signed at Washington, DC. This 16th day of September, 1998.

Meredith Miller,

Deputy Assistant Secretary of Labor Pension and Welfare Benefits Administration.

[FR Doc. 98–25258 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–29–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 October 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 October 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 31st day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 08/31/1998

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,909	Ahoskie Apparel (Co.)	Ahoskie, NC	08/13/1998	Children's Sportswear.
34,910	American Bank Note (GCIU)	Philadelphia, PA	07/19/1998	Printing & Finishing Currency for India.
34,911	Etonic Worldwide (Co.)	Richmond, ME	08/21/1998	Golf Shoes.
34,912	Dalmatia Manufacturing (Co.)	Herndon, PA	08/18/1998	Children's Clothes.
34,913	Homemaker of Tennessee (Wkrs)	Athens, TN	08/13/1998	Braided Rugs.
34,914	Arlee Home Fashions (Wkrs)	Houston, MO	08/01/1998	Decorative Pillows.
34,915	Syntec Industries (Co.)	Rome, GA	08/17/1998	Spun Yarn for Carpet.
34,916	Donora Sportswear (UNITE)	Donora, PA	08/17/1998	Men's and Ladies' Top Coats.
34,917	Bristol Apparel (UNITE)	Bristol, TN	08/17/1998	Ladies' Sportswear.
34,918	Quality Garment (UNITE)	West Union, WV	08/17/1998	Bathing Suits.
34,919	Fujitsu Computer Products (Wkrs)	Hillsboro, OR	08/21/1998	Tape Drives.
34,920	Fruit of The Loom (Wkrs)	Bowling Green, KY	07/29/1998	Customer Service Representatives.
34,921	L.C. Neely Drilling (Co.)	Robinson, IL	08/18/1998	Crude Oil.
34,922	Zeneca Specialties (IUOE)	Mt. Pleasant, TN	08/17/1998	DEPCT and DMPCT.
34,923	Delta Apparel (Co.)	Washington, GA	08/18/1998	Sews Tee Shirts.
34,924	U.S. Industries (CWA)	Glens Falls, NY	08/21/1998	Lace and Tricot Fabrics.
34,925	Windfall Products (Wkrs)	St. Marys, PA	08/20/1998	Powder Metal Products.
34,926	T.W. Hager Lumber Co (Wkrs)	Dowagiac, MI	08/21/1998	Lumber.
34,927	Westinghouse Electric (Wkrs)	Winston-Salem, NC	08/17/1998	Turbine Components.
34,928	Lipton (Co.)	Flemington, NJ	08/11/1998	Dry Food Packaging.
34,929	Allegheny Ludlum Steel (USWA)	Pittsburgh, PA	08/05/1998	Stainless Steel Sheet & Strip.
34,930	Scientific Atlanta, Inc (Wkrs)	Norcross, GA	08/20/1998	Radio Frequency Products.
34,931	Precise Polestar (Wkrs)	State College, PA	08/10/1998	Molded Plastic Products.

APPENDIX—PETITIONS INSTITUTED ON 08/31/1998—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,932	Crown Pacific (Wkrs)	Bonners Ferry, ID	08/15/1998	Lumber.
34,933	G.H. Bass and Co (Co.)	Wilton, ME	08/21/1998	Footwear.
34,934	BWD Automotive Corp (Wkrs)	Ottawa, IL	08/19/1998	Clutches, Cover, Driven Plate Assemblies.
34,935	Fairchild Semiconductor (Co.)	West Jordan, UT	08/10/1998	Switches for Cellphones, Cars, Radios.
34,936	Polaroid Corp (Wkrs)	Norwood, MA	07/28/1998	Photo Cameras and Film Packs.
34,937	Mobil Explor & Production (Co.)	Dallas, TX	08/17/1998	Crude Oil and Natural Gas.

[FR Doc. 98–25259 Filed 9–21–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,562; TA–W–34,562A; TA–W–34,562B

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 August 10, 1998, applicable to all workers of Boise Cascade, Emmett, Idaho. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the subject firm's Cascade, Idaho plant. The company also reports that worker separations will occur at the Horseshoe Bend, Idaho facility when it closes September 30, 1998. The workers at the Cascade and Horseshoe Bend, Idaho facilities process logs into green lumber that is used in the manufacturing of plywood and softwood dimensional lumber. The production of green lumber at Boise Cascade's Cascade and Horseshoe Bend, Idaho plants contribute to the production of plywood and softwood dimensional lumber at Boise Cascade's Emmett, Idaho plant. Accordingly, the Department is amending the certification to cover workers at the subject firms' Cascade and Horseshoe Bend, Idaho plants.

The intent of the Department's certification is to include all workers of Boise Cascade adversely affected by increased imports.

The amended notice applicable to TA–W–34,562 is hereby issued as follows:

All workers of Boise Cascade, Emmett, Idaho (TA–W–34,562), Cascade, Idaho (TA–W–34,562A) and Horseshoe Bend, Idaho (TA–W–34,562B) who became totally or partially separated from employment on or after May 5, 1997 through August 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 3rd day of September, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–25261 Filed 9–21–98; 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 petitions 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 October 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 October 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, DC 20210.

Signed at Washington, DC this 24th day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 08/24/1998

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,876	Comlinear National (Comp)	Fort Collins, CO	08/13/1998	Semiconductors.
34,877	Springs Industries, Inc (Wrks)	Gordon, GA	08/10/1998	Infant Garments and Accessories.
34,878	Heatube Company (Comp)	Clarence, MO	08/07/1998	Electric Heating Elements for Appliances.
34,879	Show Me Jackets Mfg (Comp)	California, MO	08/10/1998	Jackets.
34,880	Preston Glove Co (Wrks)	Preston, MS	08/13/1998	Gloves.
34,881	Dresser Oil Tools (Wrks)	Odessa, TX	08/20/1998	Oil Drilling Tools and Pumps.
34,882	B and B Corp. (Wrks)	E. Miami Lakes, FL	08/11/1998	Ladies' Suits.
34,883	Corning, Inc (Wrks)	Corning, NY	08/04/1998	Specialized Parts for Glass Production.

APPENDIX.—PETITIONS INSTITUTED ON 08/24/1998—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,884	Duro Inc.\Pioneer Finish (UNITE)	Fall River, MA	08/05/1998	Ladies' Apparel.
34,855	Modern Industrial Plastic (USWA)	Brookville, OH	08/10/1998	Automotive Plastic Parts.
34,886	Austin Apparel, Inc (Comp)	Phenix City, AL	07/24/1998	Tee Shirts.
34,887	Malden Mills Industries (Wrks)	Lawrence, MA	07/30/1998	Fabrics for Home Furnishings & Apparel.
34,888	Forbes Medical, LLC (Wrks)	Konawa, OK	08/05/1998	Orthopedic Supports.
34,889	AAF–McQuay (UAW)	Louisville, KY	08/12/1998	Air Filtration Systems.
34,890	Goslin-Birmingham (Wrks)	Birmingham, AL	08/05/1998	Heaters, Evaporators, Liquor Boxes.
34,891	AM-Cut (Wrks)	Opa Locka, FL	07/24/1998	Children's Sportswear.
34,892	Philips Semiconductors (Comp)	Albuquerque, NM	08/06/1998	Semiconductor Wafers.
34,893	Gintex Ltd (UNITE)	Pittston, PA	08/10/1998	Ladies' Garments.
34,894	Doris Jay (Wrks)	Miami, FL	08/04/1998	Ladies' Dresses and Sleepwear.
34,895	Genesco, Inc (Comp)	Nashville, TN	07/30/1998	Western Boots.
34,896	Paxar Woven Label (UFCW)	Paterson, NJ	08/07/1998	Woven Labels for Garments.
34,897	Weslock Brand Co (Comp)	Compton, CA	08/12/1998	Residential Door Locks.
34,898	Cablelink, Inc (Comp)	Kings Mountain, NC	07/24/1998	Molded and Flat Ribbon Cable.
34,899	Matsushita Television Co (Wrks)	San Diego, CA	08/6/1998	Color Televisions.
34,900	Oki Semiconductor Mfg (Comp)	Tualatin, OR	08/12/1998	DRAM Memory, Logic Device Circuits.
34,901	Topps Safety Apparel (Wrks)	Greensburg, KY	07/24/1998	Men's Shirts, Pants, Vests, Aprons, Jack.
34,902	Durham 2000 Corp (Comp)	Danville, VA	07/24/1998	Socks, Slipper Socks.
34,903	EIS Brake Div. of Moog (Comp)	Berlin, CT	07/24/1998	Brake Hoses.
34,904	Pairs Accessories, Inc (UNITE)	Allentown, PA	08/11/1998	Men's and Ladies' Fashion Belts.
34,905	Gear Fashions (Wrks)	Gottenborg, NJ	08/08/1998	Coats.
34,906	Fairchild Semiconductor (Wrks)	South Portland, ME	08/17/1998	Wafer Semiconductors.
34,907	Sweet-Orr and Co., Inc (UGWA)	Dawsonville, GA	08/10/1998	Men's and Boys' Shirts.
34,908	Globe Business Furniture (Wrks)	Hendersonville, TN	08/10/1998	Office Furniture.

[FR Doc. 98–25260 Filed 9–21–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL No. 41–98

UIPL No. 41–98 provides guidance on the prevailing conditions of work requirement found in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act. Since it has been 30 years since the Department's last issuance on this provision, the Department is concerned that not all States remain aware of or properly apply it. Therefore, UIPL No. 41–98 is being issued to advise States of the requirements of the prevailing conditions of work provision and to provide additional guidance. Except for the discussion of the contract of employment, UIPL No. 41–98 does not modify the Department's previous issuances on this matter, UCPL No. 130 and UIPL No. 984, which are also being published as attachments to UIPL No. 41–98.

Dated: September 11, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

U. S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

CLASSIFICATION: UI

CORRESPONDENCE SYMBOL: TEUL

DATE: August 17, 1998.

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 41–98

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: GRACE A. KILBANE, Director, Unemployment Insurance Service

SUBJECT: Application of the Prevailing Conditions of Work Requirement

RECISSIONS: None

EXPIRATION DATE: Continuing

1. *Purpose.* To remind States of the requirements of the prevailing conditions of work provision of the Federal Unemployment Tax Act (FUTA) and to provide additional guidance.

2. *References.* Section 3304(a)(5)(B), FUTA; Unemployment Compensation Program Letter (UCPL) No. 130; and Unemployment Insurance Program Letter (UIPL) No. 984.

3. *Background.* Section 3304(a)(5)(B), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that unemployment compensation (UC) shall not be denied to any otherwise eligible individual for refusing to accept new work—

If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;[1]

The Department previously issued guidance on the prevailing conditions requirement in 1947 in UCPL 130[2] and in 1968 in UIPL No. 984. Although both issuances remain in effect, the Department is concerned that, because they were issued a long time ago, not all States remain aware of them or properly apply them. This concern arises from several training sessions and conferences where the prevailing conditions requirement was discussed. The Department also learned of a State-conducted survey on the prevailing conditions requirement which indicated that many States were not examining fringe benefits. When the Advisory Council on Unemployment Compensation queried States on their eligibility provisions, it notably did not ask about the prevailing conditions requirement

[1] Two other requirements exist in Section 3304(b)(5), FUTA: UC may not be denied for refusing new work if the position offered is vacant due directly to a strike, lockout or other labor dispute or if "as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

[2] UCPL 130 was later incorporated in the Department's Benefit Series, 1–BP–1, BSSUI, September 1950.

and only a few States mentioned that requirement in their responses. Also, in the 30 years since the most recent UIPL was issued, the labor market has undergone significant changes, notably in the increase in temporary workers and the importance of fringe benefits. Therefore, this UIPL is being issued.

Section 4 of this UIPL offers a brief summary of UCPL 130 and UIPL 984 (both attached). It also emphasizes that the prevailing conditions requirement applies to certain voluntary quits and clarifies UIPL 984's discussion of a "contract of employment." Section 5 discusses one aspect of adjudicating prevailing conditions issues. Section 6 addresses a change in the labor market—the increase in temporary work—and its relation to the prevailing conditions requirement. Except for the discussion of the contract of employment, this UIPL does not modify UCPL 130 or UIPL 984, both of which remain in effect.

This UIPL contains the minimum requirements States must meet to conform with the prevailing conditions requirement. Nothing prohibits States from interpreting State law provisions implementing the prevailing conditions requirement in a manner more favorable to the individual worker.

4. *Discussion.*

a. *In General.* To determine if the offered work is suitable, States conduct a two-tiered analysis. First, the work must be suitable to the individual considering his or her previous wage and skill levels. Whether the work is suitable under this test is generally a matter of State law.[3] Second, the work must meet the requirements of Section 3304(a)(5)(B), including the "prevailing conditions of work" requirement. As discussed below, the prevailing conditions requirement applies not only to refusals of work, but also to separations from employment involving a refusal of "new work." It does not matter why the individual refused new work not meeting the prevailing conditions requirement; if the work does not meet the prevailing conditions requirement, compensation may not be denied.

According to UIPL 984, the prevailing conditions requirement is designed to assure that an individual cannot lose rights to compensation because of a refusal of substandard work. Also according to UIPL 984, the purpose of the requirement is to prevent, among other things, depressing wage rates or other working conditions to a point substantially below those prevailing for similar work in the locality. The provision requires a liberal construction to effectuate its purpose.

b. *Definition of New Work.* The prevailing conditions of work requirement applies whenever an offer of "new work" is refused. Under UIPL 984, "new work" includes:

(1) An offer of work to an individual by an employer with whom the worker has never had a contract of employment,

(2) An offer of reemployment to an individual by a previous employer with whom the individual does not have a contract of employment at the time the offer is made, and

(3) An offer by an individual's present employer of:

(a) Different duties from those the individual has agreed to perform in the existing contract of employment; *or*

(b) Different terms or conditions of employment from those in the existing contract.[4]

UIPL 984 further provides that "an attempted change in the duties, terms, or conditions of the work, *not authorized by the existing employment contract*, is in effect a termination of the existing contract and the offer of a new contract." (Emphasis added.) UIPL 984 did not, however, recognize that, if an employer requires a contract providing for constantly changing conditions, then the prevailing conditions requirement would be nullified. A common-sense understanding of the term "new work" includes performing different work, even if the employment contract provides for performing such different work. Further, by accepting this as a condition of obtaining employment, the individual would, in effect, be forced to waive the protections under the prevailing conditions requirement as a condition of accepting a job. For these reasons, UIPL 984 is supplemented by the following: No contract granting the employer the right to change working conditions may act as a bar to determining that "new work" exists.

A refusal of new work may occur when the individual is already unemployed or it may be the cause of an individual's separation from employment. When the refusal is the cause of an individual's unemployment, States must assure that issues adjudicated as "voluntary quits" under State law are also adjudicated, when appropriate, under the prevailing conditions of work requirement. An individual may not be disqualified for voluntarily quitting or for refusing an offer of otherwise suitable work when the new work does not meet the prevailing conditions of work in the locality.

c. *When States Must Investigate Prevailing Conditions.* The State has an affirmative duty to assure an offer of new work meets the prevailing conditions requirement before denying UC if:

(1) The individual specifically raises the issue,

(2) The individual objects on any grounds to the suitability of wages, hours, or other offered conditions of new work, or

(3) Facts appear at any stage of the administrative proceedings which put the agency or hearing officer on notice that the conditions of the new work might be substantially less favorable to the individual than those prevailing for similar work in the locality.

To conduct a prevailing conditions inquiry, States must determine what constitutes "similar work" and "prevailing wages, hours, or other conditions," and whether the offered work is "substantially less favorable" to the particular claimant than the prevailing wages, hours, or conditions of similar work in the locality.

d. *Similar Work.* Under UCPL 130, similarity of work is determined by examining the "operations performed, the skill, ability, and knowledge required, and responsibilities involved." States should not rely on job titles alone, which are sometimes misleading. In some occupations the similarity of the work cuts across industry lines. (For example, many accounting functions are similar regardless of the industry.) The nature of the services within an occupation may vary depending on the degree of skill and knowledge required. UCPL 130 continues—

"[s]imilar work" is basically a common sense test * * *. On the one hand, the comparison should not be so broad as to result, for example, in the finding of a prevailing wage which bears no relation to those generally paid for some of the kinds of work being compared. On the other hand, the distinctions should not be so fine as to leave no basis for comparison with other work done in the locality * * *.

The UCPL goes on to say that the question of what is similar work should not be determined on the basis of what constitutes conditions of work such as the hours of employment, the permanency of the work, unionization, or benefits, since such factors beg the question at issue: what is "similar work?" Rather, the determination of what constitutes similar work will be made on the basis of the similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

The determination of similar work applies to work performed in the "locality". Under UCPL 130, the locality consists of work in the competitive labor market area in which the conditions of work offered by an employer affect the conditions offered for similar work by other employers because they draw upon the same labor supply. If no similar work exists in the locality, the State may, but is not required to, examine work outside the competitive labor market.

e. *Prevailing Wages, Hours and Conditions of Employment.* Once similar work is identified for the locality, the State must focus on what wages or hours are most prevalent and what conditions are most common for similar work in the locality.

Under UCPL 130, the phrase "conditions of work" refers to the express and implied provisions of the employment agreement and the physical conditions under which the work is performed, as well as conditions that arise at work as a result of laws and regulations, such as coverage for workers' compensation. The phrase "conditions of work" encompasses fringe benefits such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also encompasses job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

States may not disregard any of these factors when investigating a "prevailing

[3] The exception is for extended benefits where "suitable work" must meet the requirements of Section 202(a)(3)(C) of the Federal-State Extended Unemployment Compensation Act.

[4] The basis for this position is discussed in UIPL 984.

conditions" issue. An individual may not be denied UC for refusal of work if the wages, hours, or any other material condition or combination of conditions of the work offered is substantially less favorable to the individual than those prevailing in the locality for similar work.

f. *Substantially Less Favorable to the Individual.* UCPL 130 describes the language "substantially less favorable to the individual" as presenting a definite but not inflexible standard based on the conditions under which the greatest number of employees in an occupation are working in the locality. It does not preclude the denial of benefits because of the existence of minor or purely technical differences that would not undermine the existing labor market conditions or would not have an appreciable adverse effect on the individual. In borderline cases where it is not clear whether the difference is material or the facts cannot be precisely determined, the general rule of liberal interpretation of remedial legislation indicates that the claimant should be given the benefit of the doubt.

In the prevailing conditions context, the question is whether *any material condition or combination of conditions* render the work substantially less favorable to the worker than similar work in the locality. Factors to be considered are the actual conditions in question, the extent of difference between the offered work and similar work, and the effect such differences have on the worker. When conditions can be converted into a monetary value, these can be compared as part of the wage package or wage rate. The value to the worker of health insurance, pension, paid vacations, and holidays, for example, is readily ascertainable and provides an objective basis for comparing the conditions of employment and determining the prevailing labor standards and thus the suitability of the offered work.

5. *Adjudicating a Prevailing Conditions Issue.* Before an individual is disqualified from the receipt of UC due to a refusal of suitable work, the State must determine:

(1) That there was a *bona fide* offer of work;

(2) That, under State law, the work is suitable to the individual in terms of the individual's previous wage and skill levels;

(3) That the wages, hours, and other conditions of the work were not substantially less favorable to the individual than those prevailing in the locality; and,

(4) That, under State law, there was not good cause for refusing the offer.

The information needed to determine items (1), (2) and (4) is usually readily available. As a result, the State may be able to decide that an individual is eligible without adjudicating the often time-consuming prevailing conditions issue. For example, if the job offer was not *bona fide*, the work was not reasonably suitable to the individual, or there was good cause for refusing work, then there is no need to adjudicate prevailing conditions issues. Conversely. if the State determines the individual would be ineligible under any of items (1), (2) or (4), then it must adjudicate any prevailing conditions issue before denying the individual.

Similarly, when the refusal of an offer of new work involves the application of a State's voluntary quit provisions, there is no need to adjudicate a prevailing conditions issue when the individual is determined to be otherwise eligible. However, the State must adjudicate any prevailing conditions issue before denying the individual.

6. *Temporary Work.* Since UCPL 130 and UIPL 984 were issued, the use of temporary or contingent workers has greatly expanded. One of the incentives for employers to use temporary workers is that these workers reduce employer costs since they often do not enjoy the wages, hours, and other conditions enjoyed by their permanent counterparts. Temporary workers may be ineligible for fringe benefits and they may not be trained for higher-skilled jobs. By avoiding the costs associated with permanent workers, employers could be depressing precisely those factors considered "prevailing conditions" within the FUTA labor standards: fringe benefits, health insurance, promotion policies, etc.

Just as it applies to other refusals of work, the prevailing conditions requirement applies to refusals of offers of temporary work. The fact that the work is temporary should generally be sufficient to trigger a prevailing conditions inquiry. Also, as noted in item 4.b., "new work" may not be limited by an employment contract which grants the employer the right to change employment conditions. Therefore, a refusal of temporary work in the form of a new assignment from a temporary help firm is also subject to the prevailing conditions requirement.

As noted in item 4.d., what constitutes similar work is not determined on the basis of the conditions of work such as the hours of employment, the permanency of the work, or benefits. (These factors are considered only after the question of similar work has been decided.) Accordingly, temporary work should not be compared only to similar temporary work. Instead, it must be compared with all work, temporary and permanent, in a similar occupational category.

Temporary work is not *per se* unsuitable under the prevailing conditions requirement. If, for example, the norm for a particular occupation in a locality is temporary work, then temporary work is the prevailing condition of such work. As another example, when temporary help firms are involved, an individual so desiring may work continuously. The State must collect the necessary facts to determine the specifics in each case.

Also, the short-term duration of temporary work may be a voluntary or favorable condition for some individuals. If the State establishes through fact finding that this is the case for an individual, than the work offered is "not less favorable to the individual" than the work prevailing in the locality.

7. *Action.* Appropriate staff, including higher and lower appellate authorities, should be provided with copies of this UIPL. Action should be taken to assure that the prevailing conditions requirement is applied as described in this UIPL, UIPL 984 and UCPL 130.

8. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

In Reply Refer to File No. 13:AS:I

Federal Security Agency, Social Security Administration, Washington 25, D.C.

Bureau of Employment Security

January 6, 1947.

Unemployment Compensation Program Letter No. 130

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

Principles Underlying the Prevailing Conditions of Work Standard

The attached statement of "Principles Underlying the Prevailing Conditions of Work Standard" is an offshoot of the series of statements on the principles underlying the major disqualifications which the Bureau has issued. The most recent, "Principles Underlying Labor-Dispute Disqualification," was sent to you in Unemployment Compensation Program Letter No. 124. The others were sent with Unemployment Compensation Program Letters Nos. 101, 103, and 107.

In "Principles Underlying the Suitable-Work Disqualification" there is a concise discussion of the prevailing wage standard, pages 7–11. The attached statement is a more extended exploration of the same field. Throughout the discussion, the interpretations, the applications of the law, and the suggested solutions to problems are all based on labor-market patterns, common usage of terms by employers and labor, and upon the administrative need for short, simple methods. Whereas "Principles Underlying the Suitable-Work Disqualification" stops short of suggesting definite practical techniques, the present statement tries to reach solutions which will be equally applicable at the local office and at the appeal levels.

The great need in this field is for usable wage information. In the attached statement, we have suggested a few sources. We should like to pass on to other State agencies helpful techniques which you might be able to send us for use in developing sources of data and using such data. We are greatly interested in receiving not only such devices and methods as you have found valuable, but any comments, criticisms, and suggestions you may have concerning the attached statement. We are here merely opening up a field that poses both technical and administrative difficulties. It is only by pooling our mutual thinking that we can hope to overcome those difficulties.

We are sending extra copies of this letter and the attachment for distribution to the appeals and claims personnel and to other interested personnel. A limited number of additional copies are available upon request.

Sincerely yours,

R. G. Wagenet,

Director.

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Principles Underlying the Prevailing Conditions of Work Standard

Preface

The following study of the prevailing conditions of work provisions in the State unemployment compensation acts was prepared by the technical staff of the Bureau of Employment Security. It discusses the interpretation of these provisions in the State Acts and presents the views which the Interpretation Service Section of the Bureau believes most reasonable.

In the final analysis, the interpretation of the prevailing conditions of work provisions in the State Acts, if they are to be consistent with the corresponding provisions in the Internal Revenue Code, depends on the meaning of the requirement in section 1603 (a)(5)(B) of the Internal Revenue Code, as amended. The specific meaning of the requirement in the Internal Revenue Code is for the determination of the Federal Security Agency. This statement is an effort by the Bureau of Employment Security to assist the State agencies in their administration of the prevailing conditions of work provisions, which have always presented many difficult problems.

Principles Underlying the Prevailing Conditions of Work Standard

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Introduction

All of the State unemployment compensation acts provide that benefits shall not be denied an otherwise eligible individual for refusing to accept new work "if the wages, hours, or other conditions of the work are substantially less favorable to the individual than those prevailing for similar work in the locality." This provision in the unemployment compensation acts is one of the most difficult to administer. Its application can best be understood in relation to the other benefit provisions in the State acts.

General Benefit Provisions

In order to be eligible for benefits under the State acts a claimant must meet the requirements of the law. Among other things he must be able to work and available for work; that is, he must be currently in the labor market. If he does not stand ready, willing, and able to accept suitable work during the week for which he has filed claim, he is ineligible for benefits.

In addition, though eligible, the worker may be subject to denial of benefits if his unemployment is due to a labor dispute, if he was discharged for misconduct connected with the work, or if he left his work voluntarily or has refused suitable work without good cause. Denial of benefits in such cases follows on the theory that the worker's unemployment is not due to a lack of suitable job opportunities.

These disqualifying provisions are in the nature of exceptions to the general remedial purpose of the acts. They deny benefits only if the claimant's action falls directly within the limits of the exception when all the facts and circumstances are considered. Under most State laws, for example, the claimant is subject to denial of benefits for refusing work only if the work was suitable and he refused it without good cause. Moreover, in determining whether the work was suitable for the claimant, most of the State acts specifically provide for consideration of the degree of risk involved to his health, safety, and morals; his physical fitness and prior training; his experience and prior earnings; the length of his unemployment and prospects of securing local work in his customary occupation; and the distance of the work from his residence.

The law does not specify the exact weight to be given these and any other considerations which may be relevant to the determination because whether a job is suitable for a particular worker and whether he had good cause for refusing it can only be determined on the basis of the facts in the case. Thus, the actual determination of whether a claimant is subject to disqualification for refusal of suitable work without good cause is left to the discretion of those charged with the administration of the act. The same is true of the availability provision and the other general disqualification provisions in the State acts.

Mandatory Labor Standards

As mandatory minimum standards, however, all of the State unemployment compensation laws in conformity with section 1603(a)(5) of the Internal Revenue Code, as amended, provide that an otherwise eligible individual shall not be denied benefits for refusing new work:

(A) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(C) If as a condition of being employed the individual would be required to join a company union or to resign or refrain from joining any bona fide labor organization.

These requirements have been extended to all refusals of work in most of the State acts by providing that "notwithstanding any other provisions of this Act, *no work shall be deemed suitable* and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work" unless it meets these three conditions. Clearly, "no work" is broader than "new work" and claimants are not subject to denial of benefits for refusing a job which does not meet any one of the three conditions under such a provision. Under some laws, the three labor standards requirements and the general criteria for determining whether work is suitable also apply to the determination of whether the claimant is subject to denial of benefits for voluntarily leaving work without good cause.

Relation to General Benefit Provisions

Inasmuch as the labor standards provisions are mandatory, they impose a duty on those administering the State act to assure themselves that the work offered meets these minimum standards before denying the claimant benefits for refusing work, regardless of whether he raises the issue. Inasmuch as they are minimum standards, they apply to all denials of benefits for refusal of offers of or referrals to new work regardless of his reasons for refusing the job.[1]

[1] Similarly, as in most States, where they are not limited to new work, the labor standards requirements apply to all denials of benefits for refusal of offers or referrals to any work by an otherwise eligible individual, regardless of whether he raises the issue or of his reasons for refusing the job.

If the job is vacant as a direct result of a labor dispute it does not matter, for example, whether the claimant refused it on principle, because he was afraid of bodily harm in crossing the picket line, or because the employer wanted him to start work on Friday, the 13th. He is not subject to denial of benefits under the suitable work disqualification in any case. Neither may he be held ineligible for benefits because he is unwilling to accept work which does not meet these three minimum conditions. For example, a punch press operator who is unwilling to accept less than $.80 an hour may not be held ineligible for that reason if lower wages would be substantially less favorable than those prevailing in the locality for such work.

The labor standards provisions relate primarily to the conditions on the job as compared with conditions in like jobs and the manner in which they would affect the claimant. The availability and suitable work provisions, on the other hand, turn primarily on the nature of the work and the claimant's qualifications, circumstances, and prospects. Thus work which meets the labor standards provisions may not satisfy the suitable work criteria and may not be work which the claimant need stand ready to accept. For example, a job as stenographer though it meets the labor standards requirements is not suitable for a file clerk who cannot type and take shorthand. Similarly, a job as a cook's helper which pays prevailing wages for such work is not suitable for an assistant chef who has been earning $60 a week and has prospects of earning as much again. Unless the work satisfies both the suitable work criteria and the labor standards requirements, the claimant is not subject to disqualification for refusing it and is not ineligible for benefits if he is available for a substantial amount of other work which is suitable for him.

Purpose of the Standards

Of the three labor standards requirements, the first, which prevents denial of benefits for refusal of work if the job offered is vacant due directly to a labor dispute, was designed to preserve the neutrality of the State agency in labor disputes. The third, which prevents denial of benefits if the worker as a condition of being employed is required to join a company union or resign from or refrain from joining a bona fide labor organization, was designed to deter any effort to use unemployment compensation to impede or destroy labor organizations. The second, which prevents denial of benefits if the wages, hours, or other conditions are substantially less favorable to the individual than those prevailing for similar work in the locality, was designed to prevent the unemployment compensation system from

exerting downward pressure on existing labor standards. It was not intended to increase wages or improve the conditions under which workers are employed, but to prevent any compulsion upon workers, through denial of benefits, to accept work under less favorable conditions than those generally to be obtained in the locality for such work.

Order of Discussion

It is with this second labor standard requirement that we are concerned in the succeeding discussion. The key words and phrases in this requirement are: "similar work," "locality," "prevailing," "substantially less favorable to the individual," and "wages, hours or other conditions of work." The interpretation given these phrases and the manner in which they are applied in each case determine whether the purpose intended will be achieved. Each of these words and phrases will be discussed in turn. Inasmuch as the requirement is intended to reflect labor market conditions, their interpretation should be based on existing labor market patterns and usage and they will be considered in that light.

Similar Work

Similarity of work can best be judged on the basis customarily used by employers and employees as a result of industrial experience: by occupation and grade of skill. As used in prior legislation, "similar work" has in fact been held to mean work in the same trade or occupation. Superficially this would seem to mean that a job is to be compared with others known by the same title.

However, job titles are sometimes misleading. Different occupation and grade designations are often used in different establishments for the same work. Conversely, the same titles are sometimes used for different kinds of work. *The actual comparison of jobs must therefore be made on the basis of the similarity of the work done without regard to title: that is, the similarity of the operations perforated, the skill, ability and knowledge required, and the responsibilities involved.*

Industry Relationships

In some occupations the similarity of work cuts across industry lines and the differences in the manner in which the work is done are relatively minor. Bookkeepers and boiler operators, for example, are likely to do much the same kind of work whether employed by a grain elevator company, a manufacturing concern or a retail clothing establishment. Either would be hired by establishments in almost any industry providing they had the necessary experience with the particular bookkeeping system or the heating plant in use and the required degree of skill. This essential similarity of work which cuts across industrial lines is generally true of most office, janitorial and clerical occupations and to some degree of unskilled common labor.

In most occupations, on the other hand, there is likely to be considerable variation in the work done in different industries, in parts of industries or even in particular types of establishment within an industry. There are marked differences, for example, in the work of a glazier in the construction industry and one in the automobile or the furniture industry; and within the furniture industry between the work of a glazier on wooden furniture and one who works on metal furniture. Similar differences exist in the nature of the work done by a waiter in a "greasy spoon" and one in a hotel dining room and between the work of a dress saleswoman in a bargain basement and a sales person in a dress salon. Thus even where there is an essential similarity, differences in the nature of the tools used, in the size and quality of the material worked on, or in the clientele to be served, may create characteristic differences in the work which are important to both employers and employees. Such differences are generally to be found in the mass-production-process and service occupations.

Skill Grade

The nature of the services rendered may also be differentiated within an occupational category by the degree of skill and knowledge required. The work of a head bookkeeper in a large concern who sets up the bookkeeping system and assumes responsibility for it, is clearly different from that of a bookkeeper in charge of "accounts payable" or a posting clerk in the department. These differences are reflected in the wages and other conditions in their respective employments. The work of a regular sales person who must have a thorough knowledge of the merchandise and who assumes responsibility for the stock is likewise to be distinguished from that of a rush-hour or counter clerk who is not required to have any specialized knowledge or who only accepts payment for articles selected by the customer.

The degree of distinction made within an occupation requiring the same basic skills depends to some extent on the degree to which the occupation is concentrated in the area. Where there is a heavy concentration, the workers become highly specialized and employers seek such specialization. As a result, minor differences in the work done are commonly recognized both on the job and in the hiring process.

On the other hand, the fact that "similar" makes allowance for some difference though it implies a marked resemblance must also be given weight. Too fine a distinction is likely to result in a comparison of identical rather than similar work. Generally, distinctions should be made within an occupation only when important differences in the performance of the job outweigh the essential similarity of the work.

In skilled trades a number of long-established and commonly recognized grades such as learners, apprentices, and journeymen will usually be found. There may also be special groups such as handicapped or superannuated workers which must be taken into account where there are actual differences in the tasks performed and the speed and skill required. However, the work should not be distinguished on the basis of the kind of individual ordinarily hired for the job, since it is the *work* and not the *worker* which is to be compared under the law.

Basis of Determination

In conclusion, "similar work" is basically a common sense test. The degree of similarity required in any particular instance should be calculated to carry out the general purpose and spirit of the proviso. On the one hand the comparison should not be so broad as to result, for example, in the finding of a prevailing wage which bears no relation to those generally paid for some of the kinds of work being compared. On the other hand, the distinctions should not be so fine as to leave no basis for comparison with other work done in the locality and thus make meaningless the determination of the "conditions prevailing" for comparable work. Neither should the question of what is similar work be determined on the basis of other factors which are conditions of work within the meaning of the provisions, as for example, the hours of employment, the permanency of the work, unionization, or vacation, sickness, and retirement benefits. These other factors must be considered, but only after the question of what is similar work is decided. If they were considered in determining what is similar work, such considerations would beg the very question at issue: what *conditions* generally prevail for similar work?

Sources of Information

The determination of what constitutes similar work is not difficult in occupations which have long been subject to union agreement. As a result of collective bargaining, the occupational duties and skill grades covered by agreement are usually well defined. Moreover, inasmuch as the definitions are based on industrial experience and the customs of the trade, they are applicable to nonunion as well as union work in the locality.

In occupations and localities where the work in question has not been defined by mutual agreement between employers and employees, it is necessary to look to other sources. Guidance may also be derived from the job definitions and classification practices used by State and Federal agencies responsible for wage and hour data or the enforcement of minimum standards for various occupations, the employment service, employer groups, labor organizations and the claimant's own experience. In the absence of such guidance a good general test of the similarity of the work is whether the duties and the skills required are sufficiently the same so that the workers employed in each of the jobs being compared could readily perform any of the others.

Locality

"Locality" like "similar work" is a somewhat indefinite term. Apart from any special reference to a particular place it means only a relatively limited geographic area. As used in the labor standards provisions it is an integral part of the concept of "the conditions prevailing for similar work." But while it is clear from the context that the conditions offered are to be compared with the conditions for similar work in the locality where the work is to be done, the nature and size of the area are not defined.

Arbitrary Definition

At first glance the use of arbitrary area limits such as city or county lines may appear persuasive because it seems easy to administer. Support for such interpretation is to be found in the public construction statutes in which the area for comparison of wages paid for similar work is generally defined as the State or civil division in which the work is to be performed. The phrase "immediate vicinity" in the Congressional Act of 1862 governing the wage rates of unclassified navy yard employees has likewise been interpreted in terms of a 50-mile radius about the yard.

These definitions were adopted in large part to meet court objections to the use of so indefinite a term as "locality" where penal provisions are involved. This objection does not apply to the unemployment compensation laws nor is the same usage applicable. Unlike the public construction acts the unemployment compensation laws are not penal statutes. Unlike the Navy Yard Act, they do not deal with only one type of industry which is ordinarily concentrated in urban districts. Unemployment compensation agencies have occasion to deal with almost every kind of industry and with a variety of occupations, skilled and unskilled, organized and unorganized, which center in areas of varying size.

Defining "locality" by some arbitrary device such as city and county lines or a 50-mile radius about the establishment, without regard to the labor market pattern of the occupation, will in many instances fail to effect the intent of the prevailing conditions provisions. In some cases the area will be too large. In others, too small. If it is too large, it is likely to include more than one area of concentration for the same kind of work. In such cases, generalization of the conditions prevailing in several different areas of concentration is not likely to reflect the conditions actually to be obtained in any one of them. Similarly, if the limits are too narrow, the determination will reflect conditions prevailing in only part of the area in which those attached to the occupation ordinarily seek employment.

Competitive Labor Market Area

Results in better accord with the purpose of the labor standards provisions can be achieved by interpreting "locality" in terms of the area of immediate labor market competition for similar work. It is the variation in wages and other conditions in their customary occupation within the competitive labor market area in which they normally expect to obtain employment which immediately affects workers. Accordingly, "locality" as used in the labor standards provisions in the Internal Revenue Code and the State unemployment compensation acts may be defined as the *competitive labor market area in which the conditions of work offered by an establishment affect the conditions offered for similar work by other establishments because they draw upon the same labor supply.* The term "area" as used in section 103.50 of the Wisconsin statutes which provides that the hours of work on public highway projects shall be no longer than those prevailing for such work in the area is similarly defined as the locality from which labor for any project within such area would normally be secured. Definition of locality in terms of the competitive labor market area is also in accord with the practice of most unemployment compensation agencies insofar as can be discerned from the administrative decisions.

Basic Considerations

In establishing the competitive labor market locality for an occupation the dominant considerations are the location of the establishments employing similar services, the area from which (regardless of civil and political boundaries) workers are normally drawn to supply the needs of these establishments, the commuting practices and ease of transportation in the area, and the customary migration pattern of the workers in the occupation.

Urban Occupations

Because most industries tend to cluster in towns and cities, urban and metropolitan districts, including the suburbs and outlying area within ordinary commuting distance, generally constitute the locality for most industrial occupations. In some places two or three nearby communities with similar industrial activities may constitute a single locality for many occupations. Mill or mining communities in which the companies draw their employees from the surrounding territory in competition with each other are a good example. Similarly, heavy industrialized urban districts such as the San Francisco Bay area in which there are a number of communities within easy transportation distance of each other may constitute a single locality for occupations common to the entire area.

An extensive urban or metropolitan district may on the other hand encompass several localities for occupations in which the workers do not move freely from one community to another. The San Francisco Bay area, for example, apparently encompasses several different labor markets for domestic work in which different conditions may prevail because there is no direct competition for labor among employers or between those seeking such work in different communities. The same situation probably exists in other large urban districts such as the Chicago or New York Metropolitan areas and in many other fields of employment. To take an extreme example, the competitive labor market for pinboys in neighborhood bowling alleys may be no wider than several square city blocks. However, whether there is one or several labor market localities in an urban district for an occupation will vary from one place to another with the size of the district, the location of the establishments employing such services, the nature and customs of the industry and the commuting practices of the workers in the occupation.

The difference between determining the extent of the competitive labor market locality for similar work and determining whether the job a claimant was offered is within reasonable travel distance from his home is discussed below under the heading "Distance to Work."

Interurban and Rural Occupations

The competitive labor market for some kinds of work is not limited to urban districts and may encompass more extensive areas. In the logging occupations, for example, the entire lumbering region in which an offer of better wages by one of the operating companies at the beginning of a season would draw off workers from the other camps or cause them to improve their conditions to meet the competition—would constitute the competitive labor market area. Similarly, the area in which structural steel workers or stone cutters ordinarily move from job to job and from the contracting companies ordinarily recruit such workers may be regional or even Nationwide.

Like variations are to be found in agricultural occupations. Thus, the immediate competitive labor market area for canning occupations would usually be more limited than that for field hands, while the customary migration pattern for the fruit and vegetable pickers involved will usually be more extensive. To follow the parallel further, while the competitive labor market area for poultry farm hands may be smaller than that for dairy hands in some places, the reverse may be true in other parts of the country where the poultry industry is more widespread and dairy farms are not clustered over large areas but scattered in small groups.

Distance to Work

The size of the labor market locality should not be confused with the distance a claimant can reasonably be expected to travel to work. The first turns on the nature of the occupation and the economic character of the area. The second depends on where the claimant lives, his circumstances and past work history. The two have little relation to each other. In large labor market areas, for example, the distance from one end to the other may be greater than a claimant can reasonably be expected to travel to and from work. Where the labor market area for the occupation is very small, on the other hand, it may be reasonable in view of transportation facilities to expect claimants to travel outside the labor-market area. Some claimants may live far from the locality in which the job is offered. Some may have good cause for refusing jobs beyond the immediate vicinity of their homes. Others can reasonably be expected to commute a considerable distance in view of their past work histories and present circumstances. Regardless of the claimant's situation, however, the labor market locality in which offered work is compared with similar work to determine the conditions prevailing for the occupation remains the same.

Determination and Sources of Information

There are no hard and fast rules for determining the locality for an occupation except that all of the factors which enter into the labor market pattern for such work should be considered in making the determination. A working knowledge of the nature of the occupation and the industries and kinds of establishments which employ such workers will usually be sufficient to indicate the relative size and general outline of the area. Information available from other

agencies and groups which have occasion to deal with the same problems and the means to conduct a more complete study will also prove useful. In cases where the inclusion or exclusion of borderline districts or establishments would result in a substantially different determination, expert opinion and more thorough investigation may be necessary. Once the locality for the occupation has been determined, however, it can be applied in all future cases involving offers of similar work within the area, unless substantial changes in the industrial pattern of the area or the occupation become apparent.

Prevoiling

Meoning

While the prevailing standard was not applied to all conditions of work in earlier legislation, the standard has had long and extensive statutory use. As applied to wage rates, its meaning was relatively well settled by administrative practice and court decisions prior to the enactment of the unemployment compensation laws. It may be assumed that those who framed the unemployment compensation acts were familiar with the legislative and court history of the standard. In the absence of evidence to the contrary, or of usage more appropriate to the intent of the provision, the standard in the unemployment compensation laws may therefore be construed on analogy to generally accepted usage under the prevailing wage provisions in prior legislation.

Under the earlier public construction statutes it has generally been accepted that the prevailing rate of wages means one specific rate for a given occupation in a given locality and not a number of rates all of which are prevailing. The prevailing minimum wage requirement in the Walsh-Healey Act of 1936, though it presents a somewhat different standard, has likewise been interpreted to mean a single monetary figure in accordance with prior usage. It has also been generally accepted that "prevailing" means the most outstanding or commonly-paid rate, and that the prevailing rate of wages for a given occupation and locality is a fact and its ascertainment a matter of investigation.

It may therefore be said as to each of different conditions of work to which the standard applies under the unemployment compensation acts: (1) *thot o specific condition of work is implied in eoch instonce* and not, for example, a range of wages or hours; (2) *that the prevailing condition is thot which most commonly obtoins in the locolity for similor work;* and (3) *thot the determination of the prevoiling condition is o matter of investigotion.*

Number of Employers vs. Number of Employees

From time to time there has been some question as to whether the prevailing standard in the unemployment compensation acts is to be applied in terms of the conditions under which the largest number of workers are employed or in terms of the conditions offered by the greatest number of employers. In some instances the conditions of work offered by the greatest number of employers has apparently been used because the information could more readily be obtained in that form. Where all the establishments involved are about the same size so that the greatest number of workers in the occupation are necessarily employed by the greatest number of employers, the result is much the same whichever test is used, if all the workers in the same establishment are employed under the same conditions. However, where the establishments are not the same size or the conditions within the establishments vary, the results are likely to differ widely depending on whether the test used is the conditions under which the largest number of workers are employed or the conditions offered by the greatest number of employers.

This issue has not apparently arisen under other laws. Under the public construction statutes, for example, the prevailing standard has customarily been applied in terms of the rate paid the largest number of workers. Justification for this usage under the unemployment compensation acts is also to be found in the traditional use of the terms "prevailing wages" and "prevailing conditions of work" by economists and other social scientists as meaning the wages and other conditions under which the largest number of workers are employed. The chief merit of using the largest number of workers lies, however, in the fact that it sets up the standard most consonant with the purpose of the prevailing conditions of work provisions. This can best be illustrated in terms of wages since that is generally the most important factor in the employment relation.

The upward or downward pressure which an employer exercises on the conditions offered for similar work in the competitive labor market locality is directly related to the number of workers he employs. An offer of better wages by a large establishment which employs several hundred welders will draw such workers from almost every establishment in the locality which pays less. Moreover, it will force employers who pay less to increase their wages if they wish to retain their employees and attract new workers. A similar increase in the wages offered by a shop which employs two or three welders will have little if any effect on the general level of wages in the occupation. Conversely, a cut in wages by a large establishment is likely to result in a reduction in the wages paid by other employers, while a similar decrease by a single small employer will have little effect on existing rates.

In other words, it is not the number of employers or how many different rates are paid but the number of jobs at each rate and level of wages which directly affects the individual worker's position in the labor market. By establishing the prevailing wage on the basis of the amount paid the largest number of workers, existing conditions in the labor market are, therefore, more truly reflected. Moreover, because each rate is weighted in proportion to the number of workers employed at that rate, the cumulative effect of the wages paid by numerous small employers is balanced against the wages paid by larger establishments.

As a general rule it may therefore be said *thot the prevoiling woges, hours,* and other conditions of work are those under which the largest number of workers engaged in similar work in the locality are employed.

Methods of Determinotion

Under the public construction acts, the rate paid a larger number of workers than any other—that is the most common or modal rate—has generally been recognized as that prevailing where a majority of the workers in the occupation are employed at the same rate. The mode is also generally used where less than a majority, but as much as 30 percent or 40 percent of the workers are paid at the same rate.

In the event that less than 30 percent or 40 percent are paid at the same rate, the average of all the rates paid weighted by the number of workers at each rate [2] is generally used rather than the mode. The New York Public Construction Act, for example, provides that the average shall be used if less than 40 percent of the workers in the occupation are paid at the same rate. Under the Federal Davis-Bacon Act the average is used if less than 30 percent are paid at the same rate.

As applied to wages and hours and such other conditions as can be measured in numbers, a combination formula of this kind best carries out the intent of the prevailing conditions of work provisions to prevent denial of benefits for refusal of work if the conditions are substantially less favorable than those generally to be obtained in the locality for similar work. This follows because each of the two methods, the mode and the average, is used under the circumstances to which it is most applicable.

The indented material below provides a more complete explanation of the methods of determining the prevailing condition of work. It may be skipped by those interested in the broader aspects of the subject.

The mode is used so long as one condition of work clearly prevails over all others and is therefore most representative of those to be obtained in the locality. This method has the merit of utilizing a condition of work which actually exists as the standard. It also has the advantage of being relatively easy to use because it requires no calculation beyond ascertaining which of the existing conditions is most widespread.

The average, on the other hand, is used where the largest number of workers employed at the same wages or hours or other condition of work does not constitute a substantial proportion of the total number in the occupation. Where this occurs, the condition under which the largest number of workers are employed in the occupation may not always be representative of those generally to be obtained. In such cases results in better accord with the purpose of the prevailing conditions of work provisions can usually be achieved by using the weighted average. In the case of wages, for example, this method, because it reflects the entire range of wages and the number of workers employed at each level of earnings, usually

[2] i.e., each rate is multiplied by the number of workers employed at that rate, and the sum of the totals is then divided by the total number employed in the occupation to obtain the average rate.

yields a wage which is more representative of those generally to be obtained in the locality than that paid any relatively small proportion of the workers in the occupation.

However, since conditions like seniority rights, which cannot be measured in numbers, cannot be averaged, the mode must of necessity be used in determining the prevailing condition of work where such factors are involved, even though only a small percentage of the workers in the occupation are employed under the same condition. The mode also should be used in determining the wages or hours prevailing for similar work even though there may be relatively few employed under the same condition, if the information necessary to calculate the average is not available. Conversely, where the average is known, but the information necessary to obtain the mode cannot be obtained, it may be necessary to use the average wage or the average number of hours as the standard for comparison even though a substantial number of workers may be employed at the same wages or hours.

Use of Class Intervals.—In determining the mode it is often simpler to divide the entire range of wages or hours or other conditions existent in the locality into class intervals rather than count the number of workers employed under each particular condition. For example, the number of workers employed at different wage rates may be ascertained on the basis of 2-cent or 5-cent or 10-cent class intervals depending on how great the amounts involved are. That is, the number of workers employed at different rates may be reported in terms of the number receiving 60 to 64.9 cents an hour, the number receiving 65 to 69.9 cents an hour, and so forth rather than the number receiving 60 cents an hour, the number receiving 60.5 cents an hour, the number receiving 61 cents an hour and so on. If the information is received in this form and the actual mode is not known (1) the modal point in the most numerous class may be determined through the use of one of the statistical formulas designed for that purpose, or (2) the mid-point of the most numerous class may be used with due allowance for the fact that it is only an approximation.

The weighted average may also be derived on the basis of class intervals (1) by multiplying the mid-point of each class interval by the number in the class, adding the totals, and dividing the result by the total number of workers involved or (2) by using one of the shorter statistical formulas designed for the purpose.

Sources of Information

Ordinarily the factual information needed to ascertain the conditions prevailing in the locality for similar work can be obtained from labor and employer organizations, from representative employers and employees, from the Employment Service, or from other Government agencies which are responsible for the collection of data on wages and hours, the enforcement of minimum labor standards in various occupations, or the administration of industrial safety codes and the like. If conditions in the occupation are fairly stable, information once obtained may prove useful over a considerable period. This is particularly true in the case of occupational wage rates which, in normal times, are likely to remain unchanged over long periods. It may therefore prove useful to construct tables of occupational rates and keep them on hand for ready reference. These should be amended from time to time as better or more current information becomes available.

The determination of the conditions prevailing in the locality for similar work is comparatively simple where most of the workers in the occupation are employed under uniform collective bargaining agreements or where the conditions are governed by custom or law. More extensive investigation and more careful examination of the data available is usually required where there are relatively few workers employed at the same wages or hours or other conditions of work. Even in such cases, though, sufficient information can generally be obtained to enable a reasonably accurate approximation.

Thus where only the range of wages or hours is known a point nearer the middle than the bottom of the range may be used as a rough estimate since there are normally few workers at either extreme. If there is reason to believe that a larger number than usual are nearer the top or the bottom of the range the estimate may be moved up or down accordingly.

Similarly, where the most complete and accurate information available is not entirely current, allowance may need to be made for any noticeable upward or downward trend which may have taken place in the meantime. In other instances in which accurate information of the conditions under which such workers are currently employed in the locality is lacking, typical offers made through the Employment Service or other channels may provide some guidance. The claimant, if he is familiar with the conditions which generally obtain for such work in the particular labor market locality, may also be able to provide some information.

In each case, though, it is for the unemployment compensation agency or tribunal to sift the data and to make the determination on the basis of the best information available.

Substantially Less Favorable

Purpose

Many of the conditions of work to which the prevailing standard is applied under the unemployment compensation acts, like seniority and safety provisions, do not lend themselves to exact comparison. In considering factors of this kind it cannot always be determined whether one condition or combination of conditions is less favorable than another. Even in the case of wages and hours which can be more exactly compared, the wages or hours which in fact prevail cannot always be definitely determined. Nor can the conditions of a job in question always be foretold with certainty. The rate of earnings, for example, will in many instances depend on the individual's ability. Working hours may also be subject to variation under different circumstances so that even the employer cannot say exactly what they will be. Moreover, a condition which is important in one occupation and locality may be relatively unimportant in another. For example, the use of ventilators to draw off fumes is important in a chemical plant and the height of a chamber to which he is assigned may be important to a miner. Both are relatively unimportant, however, in office work.

A certain amount of leeway has therefore been allowed in the application of the prevailing standard under the unemployment compensation acts by providing that benefits shall not be denied otherwise eligible individuals for refusing work if the wages, hours, or other conditions *are substantially less favorable to the individual* than those prevailing.

Effect

The provision thus presents a definite but not an inflexible standard. It does not preclude the denial of benefits for refusal of work where only minor or purely technical differences are involved which would neither undermine existing labor market standards nor have any appreciably adverse effect on the worker. It also allows a reasonable margin for error where the conditions prevailing in the locality for similar work or the corresponding conditions of the work offered cannot be exactly ascertained. But the basis of comparison in each instance, insofar as they can be determined, is still the conditions under which the greatest number of workers in the occupation are employed in the locality.

Application

The meaning of the words "not substantially less favorable to the individual" cannot be defined in terms of any fixed percentage, amount or degree of difference. Both the actual condition in question and the extent of the difference, as well as its effect on the worker, must be considered in each case.

If the conditions of the work the claimant refused and those prevailing are known, it is usually easy to determine whether the difference is of a material or substantial nature or is of no real consequence. In borderline cases where it is not clear whether the difference is material, the general rule that remedial legislation is to be liberally interpreted and applied in favor of those it was intended to aid would indicate that the claimant be given the benefit of the doubt. Similarly, when the facts cannot be precisely determined, the claimant would not be subject to denial of benefits for refusing work unless it is reasonably certain that the conditions on the job are not substantially less favorable than those prevailing.

Substandard Employment

There are some situations in which the prevailing standard provisions are not directly applicable though the work is unsuitable because the conditions of employment are substandard. Thus, though the conditions prevailing for similar work in the locality will ordinarily be better than the minimum standards set by State or Federal law, investigation may occasionally reveal that the wages, hours or other conditions prevailing in a particular occupation and locality are below the applicable legal minimum. In such cases where the

conditions of the work offered are in violation of law, even though they are not substantially less favorable than those prevailing, the claimant has good cause for refusing the job under the general suitable work provisions in the State acts. It is well settled that one law should not be so applied as to cause or result in the violation of another.[3]

Similarly, the claimant generally has good cause for refusing a job if the wages or other conditions are far less favorable than those in most other kinds of work in the locality, for which he is qualified, even though the job or the work in question is not covered by State or Federal wage and hour legislation. In view of the wages and other conditions generally to be obtained in the locality in other employments which the claimant is able to perform, such work would ordinarily be unsuitable and the claimant would have good cause for refusing it under most State acts. Payment of benefits in cases of this kind is also in accord with the intent of the prevailing conditions of work provisions to prevent operation of the unemployment compensation acts to depress the general level of working conditions through denial of benefits for refusal of substandard employment, though they may not come squarely within the letter of the provisions.

Wages, Hours or Other Conditions—Wages

Wages vs. Wage Rates

In the public construction acts the prevailing standard has generally been applied in terms of the prevailing "rate of wages" or the prevailing "rate of per diem wages." It has been argued that the word "wages" as used in the prevailing conditions of work provisions in the unemployment compensation acts also means the wage rate.

Support for this view is found in the fact that the hours of work, which in conjunction with the wage rate largely determine the earnings of most workers, are specifically set forth as a separate consideration. Accordingly, the provisions that benefits shall not be denied for refusal of work if the wages are substantially less favorable than those prevailing have at times been taken to mean that the hourly wage rate may not be substantially less than that prevailing.

This usage may be appropriate for the purpose of establishing the minimum rate which may be paid workers in various occupations under government supply and construction contracts. However, it is not the purpose of the prevailing conditions of work provisions in the unemployment compensation acts to establish a minimum rate which may be paid, but to prevent downward pressure on existing conditions and to give the claimant the benefit of conditions which are not substantially less favorable to him than those prevailing in the locality for similar work. Comparison in terms of wage rates alone is not always sufficient to accomplish this purpose.

Factors Affecting Earnings

Earnings are frequently affected not only by the wage rate and the hours of work, but also by the method of payment, the overtime practices and various extra bonuses and premiums. For this reason, workers generally look to both the rate and the total weekly earnings in determining whether they will accept a particular job or continue to seek other work. Similarly, employers do not merely announce the rate of pay but also emphasize total earnings. In addition, all methods of payment do not lend themselves to comparison in terms of wage rate. Though most workers are now paid at hourly or piece rates, some are still paid a flat daily or weekly wage regardless of the hours put in or the amount of work done. It is only by taking all of the factors which would affect the claimant's earnings and those of most workers in similar employment in the locality into consideration that it can be determined whether the wages offered are less favorable than those prevailing.

Basis of Comparison

Thus, where most of the workers in a particular occupation and locality are not paid on the basis of the amount of production or sales completed or the hours of work put in, but are paid a monthly or yearly salary, as is frequently true in the case of managerial and professional employees as well as farm hands, the wage comparison must be made in terms of their total monthly or yearly earnings including any remuneration received in addition to the base salary. Similarly, if the hours in the occupation are irregular and most of the workers are paid at hourly or piece rates or on a percentage basis as in the case of longshoremen, home workers and many taxicab drivers, the comparison must be made in terms of hourly or piece rates or on a percentage basis. In such cases, the fact that the hours are irregular and unscheduled prevents any further comparison of earnings.

However, in the great majority of occupations in which the workers are paid fixed or variable rates or commissions, so that their earnings depend in large part on the actual hours of work, both the wage rates and the weekly wages can be compared and both need to be taken into consideration to determine whether the wages offered are less favorable than those prevailing.

Where some of the workers are paid at other than time rates or receive variable incentive wages in addition to the hourly base rate, the various rates may be compared in terms of average straight time hourly earnings. In such cases, the average straight time hourly earnings may be derived by dividing the weekly wage minus overtime earnings by the weekly hours of work less the overtime hours. If other nonproduction bonuses or premiums are paid in addition to overtime, these would also have to be subtracted from the weekly wage before dividing.

Conversely, where the weekly wages are not directly comparable because of differences in the hours of work, the prevailing weekly wage may be derived by multiplying the prevailing hourly earnings by the prevailing hours of work. If the hours usually include overtime, the overtime earnings would also have to be taken into account in determining the prevailing weekly wage. For this purpose prevailing overtime earnings may be estimated on the basis of the usual overtime rates and practices in the occupation and locality. Any other nonproduction premiums or bonuses customarily paid workers in the occupation would likewise have to be taken into consideration in such cases in determining the prevailing weekly wage.

Basis of Determination

Implicit in the comparison of both the hourly rate and the weekly wages is the general rule that *the wages offered will ordinarily be substantially less favorable to the worker than those commonly to be obtained in the locality for similar work if either the hourly or weekly earnings are substantially lower than those prevailing.* If, for example, the work in question is usually done on a full-time basis, the wages entailed in an offer of part-time work would usually be substantially less than those of most workers in similar employment even if the hourly rates were the same. The wages he would earn in part-time employment would therefore be substantially less favorable than those prevailing in the occupation for a worker who is seeking full-time work. Similarly, if the hourly rate were substantially less than that prevailing, the wages would generally be substantially less favorable than those of most workers in similar employment. This would hold true even though the job paid higher weekly wages than most such jobs because the hours of work were longer.

In such cases, the conditions of the work offered would be substantially less favorable than those prevailing both because the hourly rate was lower and the weekly hours were longer than those generally to be obtained. The claimant would not therefore be subject to denial of benefits whether either or both factors were taken into account.

Other Considerations

In some cases, however, a true comparison may require further analysis. Other factors that affect the weekly and hourly wages may also have to be taken into consideration. Thus the payment of overtime or other nonproduction premiums and bonuses over and above those ordinarily paid such workers in the locality may have a bearing on whether the hourly rate of earnings is actually less favorable than that prevailing. To illustrate: most of the workers in the occupation may be paid at straight time rates with nothing additional for overtime, and the prevailing hourly rate may be $.70 an hour, the prevailing weekly hours of work 48, and the prevailing weekly wage $33.60. The job in

[3] From another point of view it might also be held (1) that the conditions "prevailing" for similar work means those *legally* prevailing, (2) that only conditions of work which meet the applicable State and Federal statutory standards should be considered in deterring the conditions prevailing for similar work, and (3) that conditions which violate Statutory standards do not meet the requirements of the prevailing conditions of work provisions. Under such an interpretation, the prevailing conditions of work provisions would also prevent denial of benefits to claimants who refused work under conditions which were in violation of the law.

question, on the other hand, may pay only $.65 an hour. At straight time rates this would amount to only $31.20 for a 48 hour week and would be substantially less favorable than the wages prevailing for similar work in the locality. However, the wages may not be less favorable if other factors enter the picture. If, for example, the job paid time and a half after 40 hours, the worker would earn $33.80, which is somewhat more than the prevailing wage for the same work week. In effect, he would be earning a bit more than the prevailing rate of $.70 an hour.

In other instances, the provision of special benefits over and above those received by most workers in similar employment in the locality may make the wages as favorable as those prevailing. Thus the fact that the worker would be paid for vacation and sick leave has been taken into consideration in determining whether the wages were substantially less favorable than those of most workers in the occupation. It should be remembered, however, that such benefits may not outweigh the difference in the money wages the worker would earn the year around. In addition, while workers may appreciate benefits of this kind if they are afforded in addition to the usual wage, they may prefer to receive the difference between the wages paid and the usual wages for such work in money rather than in other forms because of the greater freedom it gives them to purchase the goods, leisure or services they want.

Customary Industrial Practices

The question of differential payments for evening or night work in the form of equal pay for shorter hours or a higher rate or additional bonus may also arise. If such differentials are ordinarily paid they need to be taken into account. Accordingly, a claimant who refuses employment on the night shift at the wages which are ordinarily paid for day work but which are substantially less favorable than those prevailing for night work, would not be subject to denial of benefits under the prevailing conditions of work provision. A like result would be reached where there were established differentials for jobs involving special risks to health or safety beyond those ordinarily incurred in the occupation, as in the case of mine operations carried on in water. In cases of this kind, there may also be some question as to whether the work is similar to the less dangerous or easier operations with which it is being compared. But the same result as to payment or denial of benefits should be reached whether the jobs are held to be different with different wages prevailing for each, or whether the work is considered similar and the practice of paying a differential rate is taken into account.

Temporary or Seasonal Fluctuations

In some occupations it may also be necessary to allow for temporary differences or seasonal fluctuations in hourly and weekly earnings both in determining the prevailing wage and in determining whether the wages offered are substantially less favorable than those of most workers in similar employment. It is ordinarily expected, for example, that the earnings of department store sales workers who are paid a commission in addition to their hourly rate, will reach a peak during the winter holidays and be relatively low during the summer lull. Similar variations are to be found in the garment trades and in many other occupations in which the hours of work and consequently the weekly earnings are reduced during the off season. Since all of the establishments involved will not be affected simultaneously or to the same extent it is best to determine the prevailing wage in such cases on the basis of a normal period whenever possible, and to compare the wages offered with those prevailing in terms of the normal earnings of other workers in the establishment. If the experience of other workers in similar employment offered in the establishment indicates that the earnings in the job will average as much as those of most workers in the occupation and that the fluctuations will be no more frequent and no greater than is ordinarily to be expected in such employment in the locality, due allowance may be made for such differences. If, however, the wages do not average as much as those of most workers or the fluctuations are so extreme as to render the earnings even more uncertain than those of most such workers, the conditions of the work offered may be substantially less favorable than those generally to be obtained for similar work.

Progressive Wage Scales

A somewhat different problem is presented where most of the workers in the occupation are paid on the basis of progressive wage scales such as are frequently used by large establishments and incorporated in union agreements. In certain industries and plants, for example, inexperienced workers are hired at a minimum entrance rate and their wages increased during the training period until they are receiving as much as other workers in the department. Experienced workers may likewise be hired at a minimum job rate and their wages gradually increased up to the maximum rate paid by the plant for such work. In some cases the increases may be based on length of service with the employer; in some cases, on merit (i.e., usually skill and experience and speed); in others, on a combination of both.

Where progressive wage scales prevail, workers cannot ordinarily expect to be hired at the wages currently being paid the greater number currently employed in the occupation because many of those employed have received periodic increases based on the length of time they have worked in the same establishment. Accordingly, where progressive wage scales prevail, the determination of whether the wages offered are substandard is generally made not on the basis of the prevailing *wage*, but on the basis of the prevailing *wage scale*. Determination of the prevailing wage scale involves consideration of at least three factors: (1) *the prevailing entrance rate;* (2) *the basis on which the rates are increased;* and (3) *the amount and frequency of the increases.* The need for considering all three of these factors when applying the prevailing wage standard where progressive scales are involved can readily be illustrated.

One illustration may be found where the rate increases in a particular occupation and locality are based on length of service alone, and new employees are almost invariably hired at the entrance rate. In such cases an offer of work at the prevailing entrance rate for inexperienced workers, or the prevailing minimum job rate for experienced workers, would not ordinarily be considered substandard inasmuch as most of the workers in the occupation are hired on the same basis and at the same rate. Nevertheless the wage scale offered may still be substantially less favorable to the worker. For example, if the greater number of workers in the occupation are hired at $.70 an hour and move up to $1.10 within a year, an offer of $.75 with increases up to a maximum of only $.90 after a year on the job would be substantially less favorable than the prevailing scale of rates.

On the other hand, where workers are not always hired at the entrance rate, and rate increases depend at least in part on skill and experience, it may be that a worker with prior experience in the occupation can expect to be hired at more than the entrance rate. In such cases an offer of work at the minimum rate might well be substantially less favorable than that prevailing for a worker who has formerly earned a rate above the minimum or the middle of the range. Investigation will usually reveal the customary hiring practice in regard to workers with varying degrees of prior experience and skill and whether the entrance rate and the rate scale are as favorable to the claimant as those prevailing.

Method of Wage Payment

Aside from its effect on the amount the worker earns, the method of wage payment is itself an important condition of work. Workers frequently have justified objections to employment under a different method of payment than that to which they are accustomed and long and bitter strikes have been fought over changes from time work to piece work and the introduction of incentive wage systems. Even though the wages offered equal those of most workers in similar employment, it may therefore be necessary to determine whether the method of payment is substantially less favorable than that prevailing.

As a condition of work, the method of wage payment may be substantially less favorable to the worker than that prevailing: (1) if it would yield substantially lower earnings than the prevailing method; (2) if the earnings would be more irregular or less certain than under the prevailing method; or (3) if it would require the worker to work faster or under greater tension than the prevailing method of payment. Generally, however, the customary practice of the trade in the locality in which the work offered will govern the decision as to whether a system of payment found objectionable by workers is substantially less favorable than that prevailing.

Hours

In occupations in which the hours are not scheduled by the employer, either directly or indirectly, they are not a condition of the work and do not enter into consideration in

determining whether any of the conditions of the work offered are substantially less favorable than those prevailing in the locality for similar work. Where the hours are regulated by the employer, they are second in importance only to wages. Together with the wage rate and the method of payment they largely determine the worker's earnings. In themselves, they determine the time the worker must put in on the job and the time he has for his own needs and leisure.

Aside from their effect on the worker's earnings, the hours of the work offered may be substantially less favorable than those prevailing in the locality for similar work, if they are substantially longer, or less convenient. If "wages" as used in the prevailing conditions of work provisions is deemed to mean only wage rates and not weekly wages, it may also be held that substantially shorter hours than those prevailing, which would result in lower earnings, are substantially less favorable to a claimant who is seeking full-time employment.

Weekly Hours of Work

Inasmuch as most workers are employed at regular hours which are limited by industrial practice and custom, it is not usually difficult to ascertain the hours prevailing in the locality for similar work and to determine whether the hours of the work offered are substantially longer than those prevailing. Generally it is not necessary to consider the possibility of extra overtime in making the determination. If, however, a considerable amount of extra time beyond the regular weekly schedule is frequently required of workers in the occupation or the evidence indicates that it would be required on the job in question, that would also have to be taken into account. In such cases the past experience of other workers in the establishment may offer some guidance as to whether the hours would average more than those of most workers in like employment or be so much more irregular as to be substantially less favorable.

Temporary or Seasonal Fluctuations

As indicated in the discussion of wages, the hours of work in some occupations are also subject to seasonal fluctuations. In the needle trades, for example, the workers generally put in long hours during the rush season, particularly in the fall. During dull periods when work is slow, many are laid off and others work only a short week; that is, less than the normal weekly schedule. In such cases, it is generally best to compare the hours of the work offered with those prevailing on the basis of the normal work schedule and to make allowance for temporary or seasonal fluctuations. Again, the experience of other workers in the establishment may offer some guidance as to the extent of the fluctuations in the job offered as compared with those ordinarily to be expected and whether the hours would on the whole be no longer than those of most workers in similar employment.

Some care may have to be exercised to distinguish between temporary changes and fluctuations of this kind and permanent increases or reductions in the hours of work. The distinction would be especially important if the wage determination is made only in terms of wage rates since an offer of work which regularly involves shorter hours than those prevailing would ordinarily result in lower earnings even if the rates were the same.

In addition, any general change in the regular hours of a substantial number of workers in the occupation may also affect the prevailing hours determination. Thus, if the hours of a considerable number of workers are increased, reexamination may reveal, for example, that a greater number are now employed on a 48-hour schedule than any other, whereas a 44-hour week had previously prevailed. Similarly, if the hours of most of the workers in the occupation are reduced an offer of work at the hours which previously prevailed may now be substantially less favorable than those currently prevailing.

Arrangement of Hours

The hours of the work offered may also be substantially less favorable if they are less convenient than those prevailing in the locality for similar work. Thus, if most workers in the occupation work a 40-hour week on the basis of 5 8-hour days with Saturday and Sunday off, an arrangement whereby the worker would be required to put in 5 7-hour days and 5 hours on Saturday may be substantially less favorable to the individual than that prevailing because it leaves him only 1 day a week free even though the total number of hours is no longer than those of most workers.

Similarly, second or third shift work would generally be substantially less favorable if most of the workers in the occupation were employed on the first shift. It is because the second and third shifts are recognized as less convenient by both employers and employees that differentials are frequently paid for such work. Special payments of this kind, like extra pay for evening or holiday work, do not generally affect the hours determination. However, where the shift differential takes the form of shorter hours for equal pay, longer hours than those prevailing for second or third shift work might well be held substantially less favorable to the claimant.

There would, of course, be no question under the prevailing conditions of work provisions as to whether any shift was substantially less favorable than another if a relatively equal number of workers were employed on all shifts. In such circumstances no one shift could be said to prevail. If, however, a fairly equal number are employed on the first and second shift, an offer of work on the third shift might well be deemed substantially less favorable to the worker than the prevailing hours of work—unless such workers are generally hired on the least desirable shift and earn the right to move up to an earlier shift only as they acquire seniority. In the latter instance, the fact that the right to work on an earlier shift depends on the worker's seniority would itself be a condition of work. In such cases, determination of the prevailing arrangement of hours would be a matter of determining the shift on which the workers in the occupation are customarily hired in the locality rather than the shift on which the greater number are currently employed.

Subject to the same exception, a split shift which involves working at two different times of the day, or a swing shift which involves changing over between two different shifts at stipulated weekly intervals, would generally be substantially less favorable to the worker than the prevailing arrangement of hours if a straight shift prevailed; and a rotating three-shift arrangement would generally be substantially less favorable if either a straight shift or a swing shift prevailed. Other factors such as the hours involved and the claimant's circumstances may also enter into the determination, however. Thus, if the workers in the occupation are generally hired on the third shift, a rotating shift involving change over between the third, second and first shifts might not be substantially less favorable to the individual provided he was able to work on all three shifts and the constant change in hours would not affect him adversely.

Other Factors

Whether lesser differences such as the time a shift begins and ends or in the length of the lunch hour, etc., render the hours of work substantially less favorable to the individual also depends on the nature and extent of the difference and on the claimant's circumstances. Thus, if the claimant would be required to report to work at 6:30 a.m. whereas most workers in like employment did not begin to work until 9:00 a.m., the hours might well be held substantially less favorable than those prevailing. But a difference of a half hour or three-quarters of an hour in the time the shift started might not be material if it would adversely affect the claimant. In other cases the omission of rest periods granted most workers in like employment and differences in the length of the lunch hour or the starting hour may be compensated by other circumstances such as the fact that the workers are seated on the job or the existence of lunchroom facilities on the premises.

Generally, though, it will not be necessary to go into questions of this kind. The hours characteristic of the occupation in the particular locality will usually govern the decision as to whether an inconvenient shift or arrangement of hours is substantially less favorable to the individual.

Other Conditions of Work

As ordinarily used, the phrase "conditions of work" refers to the provisions of the employment agreement, both express and implied, and the physical conditions under which the work is done pursuant to the agreement. It is also applied at times to conditions which arise from actual work on the job as a result of laws and regulations which are not within the employer's control. So interpreted, the phrase "conditions of work" includes such factors as coverage by the State workman's compensation and unemployment compensation acts and the Federal old-age and survivors insurance provisions.

In General

Under either interpretation, the phrase encompasses not only wages and hours but such other factors as:

1. Group insurance against industrial accident, sickness or death;
2. Paid sick and annual leave, and paid vacations;
3. Provisions for unpaid leave of absence and for holiday leave or payment;
4. Pensions, annuities and other retirement provisions;
5. Severance pay;
6. Job seniority and reemployment rights;
7. Training, transfer and promotion policies;
8. Minimum wage guarantees;
9. Union membership provisions, representation and coverage;
10. Grievance procedures and machinery;
11. Work rules and regulations;
12. Health and safety rules, devices and precautions;
13. Medical and welfare programs;
14. Sanitation; and
15. Heat and light and ventilation.

Moreover, while the list set forth above by way of illustration of the more common factors which may be important in various occupations and localities is extensive, it is by no means all inclusive. There are many other factors which may be important in certain occupations and localities.

In Particular Occupations

Thus in outdoor employments, if it appears that the claimant would be required to work in all kinds of weather, it may be important to ascertain if most workers in like employment in the locality are required to be on the job regardless of the weather and if some shelter or protection is generally provided. In inspection jobs and in the case of stock chasers and many other employments, the weight of the parts or materials the worker may have to lift without mechanical aid may be important. In longshoreman's work and in the case of deliverymen and movers the size of the crew is often a matter of negotiation.

In the needle trades, questions may arise as to the state of repair in which machines are kept or whether the worker would be required to fix his own machine, since a poorly adjusted machine results in spoilage and lower earnings at piece rates and the time spent repairing the machine is lost to the worker. In the textile industry, the number of machines or bobbins the worker is required to tend is frequently an issue. In coal mining the height of the chamber in which the work is done, the presence of water or gas, the frequency with which the mine is inspected, and the amount of timbering or other nonproductive work required may be important.

Varying Importance

Because of the innumerable variations in the conditions under which workers are employed in various occupations and localities, and because many of the conditions other than wages and hours are so closely interrelated with the nature of the work, it is not possible to discuss them without going into the details of particular trades and industries. Nor can any generalization be made about the relative importance of many of these conditions without considering them in relation to each other. Thus the lack of a guaranteed minimum weekly wage may be a technical rather than a material difference if the worker would in all probability regularly earn as much or more than the amount guaranteed to most workers in like employment in the locality. Similarly, the importance of a seniority provision would depend on whether it only dictated the order in which workers in the occupation would be laid off or also determined promotions and transfers from one department or shift to another.

Basis of Determination

In general, however, the question under the prevailing conditions or work provisions as to conditions other than wages or hours is whether the conditions of the work offered are substantially less favorable to the claimant than those prevailing in any important respect. The claimant is not subject to denial of benefits for refusal of work if the wages, hours, or any other material condition or combination of conditions of the work offered is substantially less favorable to him than those prevailing in the locality for similar work.

If there is reason to believe that the conditions of the work offered are less favorable than those prevailing for similar work in the locality in any important respect, it is for the agency to investigate. The issue in each case must be decided on the basis of all the relevant facts and the best information available.

In reply refer to UODA.

U.S. DEPARTMENT OF LABOR

Manpower Administration
Bureau of Employment Security

Unemployment Insurance Program Letter No. 984, September 20, 1968

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

SUBJECT: Benefit Determinations and Appeals Decisions Which Require Determination of Prevailing Wages, Hours, or Other Conditions of Work

REFERENCES: Section 3304(a)(5)(B) of the Federal Unemployment Tax Act; *Principles Underlying the Prevailing Conditions of Work Standard*, September 1950, BSSUI (originally issued January 6, 1947 as Unemployment Compensation Program Letter No. 130)

Purpose and Scope

To advise State agencies and appeal authorities of the interpretation of the phrase "new work" for the purpose of applying the prevailing wage and conditions-of-work standard in section 3304(a)(5)(B) of the Federal Unemployment Tax Act, particularly in relation to an offer of work made by an employer for whom the individual is working at the time the offer is made.

This letter is prompted primarily by a current problem arising from a number of recent cases in which findings were not made with respect to the prevailing wages, hours, or other conditions of the work, because apparently it was not considered that "new work" was involved.

Federal Statutory Provision Involved

Section 3304(a)(5) of the Federal Unemployment Tax Act, the so-called labor standards provision, requires State unemployment insurance laws, as a condition of approval for tax credit, to provide that:

"compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

* * * * *

"(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;"

Legislative History

The prevailing wage and conditions-of-work standard, originally in section 903(a)(5)(B) of the Social Security Act and since 1939 in section 3304(a)(5)(B) of the Federal Unemployment Tax Act applies only to offers of "new work."[1] The hearings before Congressional committees and the reports of these committees furnish little aid in construing the term.[2] The Congressional debates, however, clearly indicate that the labor standards provision was included in the bill for the protection of workers.[3] The objectives of the provision are clearly set forth by the Director of the Committee on Economic Security, which prepared the legislation:

"* * * compensation cannot be denied if the wages, hours or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality. The employee cannot lose his compensation rights because he refuses to accept substandard work. That does not mean that he cannot be required to accept work other than that in which he has been engaged; but if the conditions are such that they are substandard, that they are lower than those prevailing for similar work in the locality, the employee cannot be denied compensation."[4]

It is plain that the purpose of section 3304(a)(5)(B) is to prevent the tax credit from being available in support of State unemployment compensation laws which are used, among other things, to depress wage rates or other working conditions to a point substantially below those prevailing for

[1] Many State laws extend its application by specifying that "no work shall be deemed suitable" which fails to satisfy the standard.

[2] The Report of the Committee on Ways and Means on the Social Security Bill (H.R. 7260), House Report No. 615, 74th Cong., 1st Session, page 35, uses the term "new job" and this is copied in the Report of the Senate Committee on Finance, Senate Report No. 628, 74th Cong., 1st Session, page 47, but the term "new job" is itself ambiguous and there is no indication that it was used by either committee in a narrow or exclusive sense.

[3] See statement of Senator Harrison, Congressional Record, Vol. 79, p.9271.

[4] HEARINGS BEFORE THE COMMITTEE OF WAYS AND MEANS, HOUSE OF REPRESENTATIVES, 74th Cong., 1st Sess., on H.R. 4120, pp. 137–38.

similar work in the locality. The provision, therefore, requires a liberal construction in order to carry out the Congressional intent and the public policy embodied therein. Interpretation is required, for the term "new work" is by no means unambiguous. But any ambiguity should be resolved in the light of such intent and public policy.

Interpretation of "New Work"

For the purpose of applying the prevailing conditions-of-work standard in section 3304(a)(5)(B) of the Federal Unemployment Tax Act, an offer of new work includes (1) an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; (2) an offer of re-employment to an unemployed individual by his last (or any other) employer with whom he does not have a contract of employment at the time the offer is made; and (3) an offer by an individual's present employer of (a) different duties from those he has agreed to perform in his existing contract of employment, or (b) different terms or conditions of employment from those in his existing contract.[5]

This definition makes the determination of whether an offer is of "new work" depend on whether the offer is of a new contract of employment. This we believe is sound.

All work is performed under a contract of employment between a worker and his employer. The contract describes the duties the parties have agreed the worker is to perform, and the terms and conditions under which the worker is to perform them. If the duties, terms, or conditions of the work offered by an employer are covered by an existing contract between him and the worker, the offer is not of new work. On the other hand, if the duties, terms, or conditions of the work offered by an employer are not covered by an existing contract between him and the worker, the offer is of a new contract of employment and is, therefore, new work.

It is not difficult to agree that "new work" clearly includes an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; that is, an employer for whom he has never worked before. If the worker has never had a contract of employment with the offering employer, the fact-finding and the application of the test are simple.

But if the phrase "new work" were limited to work with an employer for whom the individual has never worked, it is plain that the purpose of section 3304(a)(5)(B) would be largely nullified. It can make no difference, insofar as that purpose is concerned, that the unemployed worker is offered re-employment by his former employer rather than employment by one in whose employ he has never been. It can make no difference either in the application of the test. The question is whether the offer of re-employment is an offer of a new contract of employment. If the worker quit his job with the employer, or was discharged or laid off indefinitely, the existing contract of employment was thereby terminated. An indefinite layoff, that is, a layoff for an indefinite period with no fixed or determined date of recall, is the equivalent of a discharge. The existence of a seniority right to recall does not continue the contract of employment beyond the date of layoff. Such a seniority right is the worker's right; it does not obligate the worker to accept the recall and does not require the employer to recall the worker. It only requires the employer to offer work to the holder of the right, before offering it to individuals with less seniority.

Any offer made after the termination is of a new contract of employment, whether the duties offered to the worker are the same or different from those he had performed under his prior contract, or are under the same or different terms or conditions from those which governed his last employment. There is not, however, a termination of the existing contract when the worker is given a vacation, with or without pay, or a short-term layoff for a definite period. When the job offer is from an employer for whom the individual had previously worked, inquiry must be made as to whether the contract with the employer was terminated, and if so, how?

Although it has been more difficult for some to see, the situation is no different when an individual's present employer tells him that he must either accept a transfer to other duties or a change in the terms and conditions of his employment, or lose his job. Applying the test, it is clear that an attempted change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract. Not only is this a sound application of legal principles, but it is thoroughly in harmony with the underlying purpose of the prevailing conditions of work provision. That purpose would be largely frustrated if benefits were denied for unemployment resulting from the worker's refusal to submit to a change in working conditions which would cause these conditions to be substantially less favorable to a claimant than those prevailing for similar work in the locality. The denial of benefits in such circumstances would tend to depress wages and working conditions just as much as a denial of benefits for a refusal by an unemployed worker to accept work under substandard conditions. If a proposed change in the duties, terms, or conditions-of-work not authorized by the existing employment contract were not "new work," prevailing wage and conditions-of-work standard could be substantially impaired by employers who hired workers at prevailing wages and conditions, and thereafter reduced the wages or changed the conditions, thereby depriving workers of the protection intended to be given them by the prevailing wage and conditions-of-work standard. The terms of the existing contract, so important in this situation, are questions of fact to be ascertained as are other questions of fact.

The following are examples of offers of new work by the employer for whom the individual is working at the time of the offer:

a. A worker employed as a carpenter is offered work as a carpenter's helper as an alternative to a layoff.

b. A bookkeeper is transferred to a job as a typist.

c. The hours of work of a factory worker employed for an 8-hour day are changed to 10 hours a day.

d. A worker employed with substantial fringe benefits is informed that he will no longer receive such benefits.

e. A worker employed at a wage of $3 an hour is informed that he will thereafter receive only $2 an hour.

In each of these cases either the offered duties are not those which the worker is to perform for the employer under his existing contract of employment, or the offered conditions are different from those provided in the existing contract.

Applying the Prevailing Conditions-of-Work Standard

The prevailing wage and conditions-of-work standard does not require a claims deputy or a hearing officer to inquire into prevailing wages, hours, or working conditions in every case of refusal of new work, or to determine in every such case in which he denies benefits whether the wages, hours, or other conditions of offered work are substandard. This would be unnecessarily burdensome. However, a determination must be made as to prevailing conditions of work when (1) the claimant specifically raises the issue, (2) the claimant objects on any ground to the suitability of wages, hours, or other offered conditions, or (3) facts appear at any stage of the administrative proceedings which put the agency or hearing officer on notice that the wages, hours, or other conditions of offered work might be substantially less favorable to the claimant than those prevailing for similar work in the locality.

State agency determinations and decisions at all levels of adjudication must reflect the State agency's consideration of prevailing conditions of work factors when pertinent. In particular, referees' decisions as to benefit claims must contain, in cases where issues arise as indicated above, appropriate findings of fact and conclusions of law with respect to the prevailing conditions-of-work standard. This is so whether the State ultimately determines the worker's right to benefits under the refusal-of-work provision of the State law or some other provision, as, for example, under the voluntary quit provision. Since the Federal law requires, for conformity, that State laws include a provision prohibiting denial of benefits for refusal of new work where the conditions of the offered work are substantially less favorable to the individual than the conditions prevailing for similar work, there cannot be, under the State law, a denial in such circumstances regardless of the provision of State law under which the ultimate determination is made.

[5] The "group attachment" concept is outside the scope of this letter. "Group attachment" arises under the provisions of an industry-wide collective bargaining agreement between a group of workers and a group of employers whereby workers cannot be hired directly by individual employers but are referred to employers by a hiring hall on a rotational basis and under which each worker has a legally enforceable right to his equal share of the available work with such employers. See *Matson Terminals Inc.* v. *California Employment Commission,* 151 P. 2d 202, discussed in the Secretary's decision with respect to Washington dated December 28, 1949, and the Secretary's decision in the California conformity case. Benefit Series, FSLS 315.05.1.

In applying the labor standards, the State agency must determine first whether the offered work is "new work." If it is "new work" a determination must be made as to (1) what is similar work to the offered work, and (2) what are the prevailing wages, hours, or other conditions for similar work in the locality, and (3) whether the offered work is substantially less favorable to the particular claimant than the prevailing wages, hours, or other conditions. The key words and phrases in this standard ("similar work," "locality," "substantially less favorable to the individual," and "wages, hours, and other conditions of work") are discussed in detail in the Bureau's statement, *Principles Underlying the Prevailing Conditions of Work Standard*, Benefit Series, September 1950, 1–BP–1, BSSUI (originally issued January 6, 1947 as Unemployment Compensation Program Letter No. 130).

Please bring this letter to the attention of State agency and Appeal Board personnel engaged in benefit claim adjudication at all levels.

RESCISSIONS: None.

Sincerely yours,

Robert C. Goodwin,

Administrator.

[FR Doc. 98–25257 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02379; 02379B; 02379C]

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 10, 1998, applicable to all workers of Boise Cascade, Emmett Plywood, Emmett, Idaho. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the subject firm's Cascade, Idaho plant. The company also reports that worker separations will occur at the Horseshoe Bend, Idaho facility when it closes September 30, 1998. The workers at the Cascade and Horseshoe Bend, Idaho facilities process logs into green lumber that is used in the manufacturing of plywood. The production of green lumber at Boise Cascade's Cascade and Horseshoe Bend, Idaho plants contribute to the production of plywood at Boise Cascade's Emmett Plywood, Emmett, Idaho plant. Accordingly, the Department is amending the certification to cover workers at the subject firms' Cascade and Horseshoe Bend, Idaho plants.

The intent of the Department's certification is to include all workers of Boise Cascade adversely affected by imports from Canada.

The amended notice applicable to NAFTA–02379 is hereby issued as follows:

All workers of Boise Cascade, Emmett Plywood, Emmett, Idaho (NAFTA–02379), Cascade, Idaho (NAFTA–02379B) and Horseshoe Bend, Idaho (NAFTA–02379C) who became totally or partially separated from employment on or after May 5, 1997 through August 10, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of September, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–25262 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Independence Coal Company

[Docket No. M–98–79–C]

Independence Coal Company, HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Justice No. 1 Mine (I.D. No. 46–07273) located in Boone County, West Virginia. The petitioner proposes to use high-voltage longwall mining equipment. The petitioner asserts that the nominal voltage of the longwall power circuit(s) would not exceed 4,160 volts. In addition, the petitioner asserts that the specific terms and conditions listed in this petition would be followed and proposed revisions that specify initial and refresher training regarding these terms and conditions for its approved Part 48 training plan would be submitted to the District Manager within 60 days after the proposed decision and order becomes final. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Mettiki Coal Corporation

[Docket No. M–98–80–C]

Mettiki Coal Corporation, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petitioner proposes to use nonpermissible low horsepower testing and diagnostic equipment within 150 feet from pillar workings. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov", or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 22, 1998. Copies of these petitions are available for inspection at that address.

Dated: September 17, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–25309 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet October 7 and 8, 1998, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. This meeting is open to the public.

DATES: This ACCSH meeting will be held on October 7 and 8, 1998 as

described further in the body of this document.

SUPPLEMENTARY INFORMATION: For further information contact Theresa Berry, Office of Public Affairs, Room N–3647, telephone (202) 219–8615 Ext. 106, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–219–7894. All ACCSH meetings and those of its work groups are open to the public. Individuals with disabilities requiring reasonable accommodations should contact Theresa Berry no later than September 30, 1998 at the above address.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C 656).

ACCSH will meet from 9 a.m. to 4:30 p.m. on Wednesday, October 7 and from 9 a.m. to 1:15 p.m. on Thursday, October 8 in Rooms N–5437 B, C, and D.

The agenda items for the October 7 and 8, 1998 meeting include: Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, Charles N. Jeffress.

Construction Standards and Policy Updates to include the Proposed Standard on Subpart R "Steel Erection", the Status of the Construction Safety and Health Management Standard, the Proposed Revisions to Multi-employer Policy, and other construction related issues.

ACCSH Work Group Updates, to include such subjects as; Sanitation, Data Collection/Enforcement, Confined Space, Scaffolds, and Musculoskeletal Disorders.

For information on ACCSH Work Group meeting schedules or topics, contact Jim Boom, Directorate of Construction, Office of Construction Services, Room N–3603, Telephone 202–219–8136, extension 143.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Those submissions, received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Acting Chair of ACCSH.

Signed at Washington, DC this 16th day of September, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–25263 Filed 9–21–98; 8:45 am]

BILLING CODE 6510–26–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

TITLE OF COLLECTION: 1999 Survey of Doctorate Recipients (OMB Control No. 3145–0020).

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instrument and instructions contact Ms. Mary Lou Higgs, Acting Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 306–2063; e-mail mlhiggs@nsf.gov; or FAX (703) 306–0201.

SUPPLEMENTARY INFORMATION:

1. Abstract

The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. Fro the 1999 cycle, a sample of individuals under the age of 76 who have earned doctoral degrees in science and engineering from U.S. institutions will be surveyed. The purpose of the study is to provide national estimates describing the relationship between education and employment for Ph.D. recipients in science and engineering. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ". . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Doctorate Recipients is designed to comply with these mandates by providing information on the supply and utilization of doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women and Minorities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, is expected to be made available to researchers on CD–ROM and on the World Wide Web.

Questionnaires will be mailed in April 1999 and nonrespondents to the mail questionnaire computer assisted telephone interviewing (CATI). The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. Expected Respondents

We will mail the survey to a statistical sample of approximately 40,000 U.S. doctorates.

3. Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 16,666 hours during the year.

Comments Requested

DATES: Send written comments to NSF on or before November 23, 1998.

ADDRESSES: Submit written comments to Ms. Mary Lou Higgs, Acting Clearance Officer, through surface mail at: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; through e-mail mlhiggs@nsf.gov; or FAX (703) 306–0201.

SPECIAL AREAS FOR REVIEW: NSF request special review and comments in the following areas:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility;

(b) The accuracy of the Foundation's estimate of the burden of the proposed collection of information;

(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.

Dated: September 17, 1998.

Mary Lou Higgs,

Acting NSF Clearance Officer.

[FR Doc. 98–25282 Filed 9–21–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Facility Operating License No. NPF–38, Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP–38 issued to Entergy Operations, Inc. (the licensee) for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would modify the Notes in Table 2.2–1 (Reactor Protective Instrumentation Trip Setpoints Limits) and Table 3.3–1 (Reactor Protective Instrumentation). A Bases change is being proposed to support this change.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes modify the table notations for the 10^{-4}% Bistable in TS 2.2.1 and 3.3.1. The proposed changes to these trip bypass removal functions do not adversely impact any system, structure, or component design or operation in a manner that would result in a change in the frequency or occurrence of accident initiation. The reactor trip bypass removal functions are not accident initiators. System connections and the trip setpoints themselves are not affected by trip bypass removal setpoint variations.

Since the hysteresis for the 10^{-4}% Bistable is small, there is a negligible impact on the CEA withdrawal analyses. Revised analyses, accounting for slightly different bypass removal power levels caused by the bistable hysteresis, would result in negligible changes to the calculated peak power and heat flux for the pertinent CEA withdrawal events. Therefore, the consequences of any accident previously evaluated will not significantly change.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

The trip bypass removal functions in question protect against possible reactivity events. The power, criticality levels, and possible bank withdrawals associated with these trip functions have already been evaluated. Therefore, all pertinent reactivity events have previously been considered. Slight differences in the power level at which the automatic trip bypass removal occurs can not cause a different kind of accident.

There has been no changes to any plant system, structure, or component, nor will these changes reduce the ability of any of the safety-related equipment required to mitigate AOOs.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The safety function associated with the CPC and HLP trip functions are maintained. Since the hysteresis for the 10^{-4}% Bistable is small, there is a negligible impact on the CEA withdrawal analyses. Calculated peak power and heat flux are not significantly changed as a result of the bistable hysteresis. All acceptance criteria are still met for these events. There is no change to any margin of safety as a result of this change.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 22, 1998, the licensee may file a request for a hearing with respect

to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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. A copy of the petition should also be sent to the Office of the General Counsel, Nuclear Regulatory Commission, Washington, DC 20555–0001, and to N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 11, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 16th day of September 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25279 Filed 9–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc.; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The Nuclear Regulatory Commission (the Commission) has denied a request by GPU Nuclear, Inc., (licensee) for an amendment to Facility Operating License No. DPR–50 issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, PA. Notice of Consideration of Issuance of this amendment was published in the Federal Register on May 14, 1997, (62 FR 26572).

The purpose of the licensee's amendment request was to seek approval from the Commission pursuant to 10 CFR 50.59(c) to allow a modification for permanent removal of the TMI–1 reactor vessel missile shields.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated September 16, 1998.

By October 22, 1998, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 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.

A copy of any petitions should also be sent to the Office of the General Counsel, Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 31, 1997, as supplemented June 3, 1998, and July 13, 1998, and (2) the Commission's letter to the licensee dated September 16, 1998.

These documents 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 located at the Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 16th day of September 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25280 Filed 9–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of September 21, 28, October 5, and 12, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 21

There are no meetings the week of September 21.

Week of September 28—Tentative

There are no meetings the week of September 28.

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.—Affirmation Session (PUBLIC MEETING), (if needed).

Thursday, October 8

10:30 a.m.—Briefing by the Executive Branch (Closed—Ex. 1)

Week of October 12—Tentative

Thursday, October 15

11:30 a.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.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on September 15, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Discussion of Management Issues (Closed—Ex. 2 and 6)" be held on September 15, and on less than one week's notice to the public.

By a vote of 3–0 on September 15, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of (a) Hydro Resources Inc.: Presiding Officer's Memorandum and Order Ruling on Petitions and Areas of Concern: Granting Request for Hearing; Scheduling, LBP 98–9, May 13, 1998 and (b) Proposed Order Referring Petition to Intervene in Oconee License Renewal Proceeding to Atomic Safety and Licensing Board (Public Meeting)" be held on September 15, and on less than one week's notice to the public.

By a vote of 3–0 on September 17, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of (a) Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant. Units 1 And 2). Docket Nos. 50–317–LR, Memorandum and Order (Denying Time Extension Motion and Schedule Prehearing Conference) (Aug. 27, 1998) and (b) North Atlantic Energy Corporation Seabrook Station Unit No. 1); Atomic Safety and Licensing Board Memorandum and Order Ruling on Intervention, LBP–98–23 (Sept. 4, 1998) (Public Meeting)" be held on September 17, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found 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.

* * * * * * *

Dated: September 18, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–25447 Filed 9–18–98; 2:44 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for emergency clearance of a new information collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, will be used by Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms will be completed annually. Each form will take approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

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 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 use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before November 23, 1998.

ADDRESSES: Send or deliver comments to—Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3425, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–25254 Filed 9–21–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 2809, Federal Employees Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the FEHB Program. Certain former spouses or former Federal employees who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former spouse employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

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 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 use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before November 23, 1998.

ADDRESSES: Send or deliver comments to—Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3425, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–25256 Filed 9–21–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Information Collection: Information and Instructions on Your Reconsideration Rights, RI 38–47

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 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 an information collection. Information and Instructions on Your Reconsideration Rights, RI 38–47, outlines the procedures required to request reconsideration of an initial OPM decision about Civil Service or Federal Employees retirement, Retired Federal or Federal Employee Health Benefits requests to enroll or change enrollment, or Federal Employees' Group Life Insurance coverage. The forms list the procedures and time periods required for requesting reconsideration.

Approximately 3,100 annuitants and survivors request reconsideration annually. We estimate it takes approximately 45 minutes to apply. The annual burden is 2325 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before October 22, 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 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–25255 Filed 9–21–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549

Extension:

Rule 17j–1 [17 CFR 270.17j–1], SEC File No. 270–239, OMB Control No. 3235–0224

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the

Office of Management and Budget ("OMB") a request for extension and approval of the collection of information discussed below.

Rule 17j–1 under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act") addresses conflicts of interest between registered investment company ("fund") personnel and their funds that may arise when fund personnel buy or sell securities for their personal accounts ("personal investment activities"). Rule 17j–1, which the Commission adopted in 1980,[1] generally prohibits fund personnel from engaging in fraud in connection with personal transactions in securities held or to be acquired by the fund. In order to prevent fraud, the rule currently (i) requires a fund and each investment adviser and principal underwriter to the fund (collectively, "rule 17j–1 organizations") to adopt a code of ethics ("code") designed to prevent "access persons"[2] from engaging in fraudulent securities activities, (ii) requires an access person to report personal securities transactions to his or her rule 17j–1 organization at least quarterly, and (iii) requires a rule 17j–1 organization to maintain certain records.

In 1995, the Commission issued a release proposing amendments to rule 17j–1 ("Proposing Release").[3] The proposed amendments would require, among other things, that a majority of a fund's board, including a majority of independent directors, approve the fund's code, and review the codes of any investment adviser or principal underwriter to the fund. The proposed amendments also would require that the management of a rule 17j–1 organization, at least once a year, provide the fund's board with an issues and certification report (i) describing issues that arose during the previous year under the code of ethics applicable to the rule 17j–1 organization and (ii) certifying to the fund's board that the rule 17j–1 organization has adopted procedures that are reasonably necessary to prevent its access persons from violating its code of ethics.

In order to facilitate the identification of all securities held by access person, the proposed amendments would require that every access person provide an initial holdings report to his or her rule 17j–1 organization listing all securities beneficially owned by the access person at the time that he or she becomes an active person. The proposed amendments also would expand the types of securities excepted from the requirements of the rule, thereby increasing the number of rule 17j–1 organizations and access persons excluded from the rule's requirements concerning codes of ethics, quarterly transaction reports, and initial holdings reports.

Funds also currently are not required to disclose to the public any information about their codes of ethics. In order to provide more information to the public about a fund's policies concerning personal investment activities, the proposed amendments to rule 17j–1 would require a fund to disclose in its registration statement (i) that the fund and its investment adviser and principal underwriter have adopted codes of ethics, (ii) whether these codes permit personnel subject to the codes to invest in securities for their own accounts, and (iii) that the codes are on public file with, and are available from the Commission.[4] The proposed conforming amendments to rule 204–2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (the "Advisers Act")[5] would reduce the burden on registered investment advisers by expanding the types of transactions in securities excepted from the rule's recordkeeping requirement.

The requirement that the management of a rule 17j–1 organization provide the fund's board with an annual issues and certification report is intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of access persons. The requirement that every access person provide an initial holdings report is intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist rule 17j–1 organizations and the Commission's examinations staff in determining whether there have been violations of rule 17j–1.

The requirement that a fund make available in its registration statement information on the fund's policies concerning personal investment activities is intended to promote the integrity of the fund industry and provide investors with information they may want when making investment decisions. Disclosure also may encourage fund boards to give closer consideration when approving and reviewing the contents of codes of ethics applicable to their funds.

The conforming amendments to rule 204–2 are intended to reduce the reporting and recordkeeping burden on advisers and to modify rule 204–2(a) to except from the recordkeeping requirement transactions in securities that are excepted from the definition of "security" in rule 17j–1.

The Commission's staff estimates that there are approximately 3,800 registered investment companies that would be required to comply with the requirements of rule 17j–1. Investment advisers and principal underwriters of registered investment companies also are required to comply with certain requirements of rule 17j–1. The staff estimates that there are approximately 7,500 investment advisers registered with the Commission, of which the staff estimates 820 are investment advisers to registered investment companies. The staff also estimates that there are approximately 425 principal underwriters of registered investment companies.[6]

[1] Prevention of Certain Unlawful Activities With Respect To Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) [45 FR 73915 (Nov. 7, 1980)].

[2] Rule 17j–1 defines "access person" to include directors, officers, general partners, and any employee who, in connection with his or her regular functions or duties, participates in the selection of a fund's portfolio securities or who has access to information regarding a fund's upcoming purchases or sales of portfolio securities.

[3] Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and their Investment Advisers and Principal Underwriters, Investment Company Act Release No. 21341 (Sept. 8, 1995) [60 FR 47844 (Sept. 14, 1995)]. The Commission's proposal was based on reports prepared by the Commission's Division of Investment Management and the Investment Company Institute ("ICI") Advisory Group on Personal Investing, which studied the practices and standards governing personal investment activities of fund personnel. Division of Investment Management, Personal Investment Activities of Investment Company Personnel (1994); ICI, Report of the Advisory Group on Personal Investing (1994). These studies followed press reports and Congressional inquiries in the early 1990s regarding the personal investment activities of fund personnel.

[4] The registration forms the Commission is proposing to amend are: Form N–1A (open-end funds); Form N–2 (closed-end funds); Form N–3 (separate accounts that offer variable annuity contracts that are registered under the Investment Company Act); Form N–5 (small business funds); and form N–8B–2 (unit investment trusts). Although the Commission has not proposed amending Form S–6 (unit investment trusts), the proposed amendments to Form N–8B–2 would affect the burden of complying with Form S–6 because Form S–6 requires a unit investment trust to provide information required by Form N–8B–2.

[5] Rule 204–2(a)(12),(13) [17 CFR 275.204–2(a)(12),(13)].

[6] Funds that are money market funds or that invest only in securities excluded from the definition of "security" in rule 17j–1, and any investment advisers, principal underwriters, and access persons to these funds, do not have to comply with the rule's requirements concerning codes of ethics, quarterly transaction reports, and

Continued

The staff estimates that each year 275 new rule 17j–1 organizations each will expend 8 burden hours to formulate and provide codes of ethics for a total of 2,200 burden hours. The staff estimates that the management of 5,045 rule 17j–1 organizations[7] each will annually expend 3 burden hours to provide the fund board with an annual issues and certification report for a total of 15,135 burden hours. The staff estimates that access persons[8] each will expend .5 burden hours for the filing of each quarterly transaction report[9] for a total of 42,250 burden hours. The staff estimates that each year new access persons each will expend 1 burden hour for the filing of an initial holdings report to be provided by persons who become access persons[10] for a total of 4,895 burden hours. Finally, the staff estimates that 5,045 rule 17j–1 organizations each will expend 2 burden hours to maintain records of codes of ethics, records of violations of codes of ethics, reports by access persons, and issues and certification reports for a total of 10,090 burden hours.

The total annual burden of the rule's paperwork requirements therefore is estimated to be 74,570 hours. This estimate represents an increase of 25,470 hours from the prior estimate of 49,100 hours. The increase in burden hours is attributable to updated information about the number of affected portfolios and other entities, and to a more accurate calculation of the component parts of some information burdens.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 14, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25227 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

initial holdings reports. The estimated number of respondents reported in this section may therefore overstate the number of entities actually required to comply with the rule's requirements.

[7] Comprised of an estimated 3,800 registered investment companies, 820 investment advisers to registered investment companies, and 425 principal underwriters to registered investment companies.

[8] The Commission estimates that, on average, a rule 17j–1 organization will have 20 access persons. This number may vary considerably depending on the size of the rule 17j–1 organization. Under rule 17j–1, access persons of investment advisers to funds are exempt from filing quarterly transaction reports if the reports would duplicate information provided under rule 204–2 of the Advisers Act. Thus, the Commission staff estimates that the number of access persons filing quarterly transaction reports is equal to the average number of access persons for each 17j–1 organization multiplied by the total number of funds and principal underwriters of funds (20 × (3800 + 425) = 84,500).

[9] The number of access persons who are required to file quarterly transaction reports will vary depending on the personal investment activities of each access person. In addition, proposed rule 17j–1 contains several exceptions to filing quarterly transaction reports, including an exception if the report would duplicate information contained in broker trade confirmations or account statements received by the rule 17j–1 organization. Although a number of access persons may, on average, have transactions to report during more than one quarter each year, many access persons also may not have to provide a quarterly transaction report because their 17j–1 organizations have received the information in a broker trade confirmation or account statement. Accordingly, the Commission staff has estimated that each access person, on average, would file one quarterly transaction report each year.

[10] Based on conversations with the industry, the Commission estimates that, on average, rule 17j–1 organizations will have two new access persons each year. However, proposed rule 17j–1 would not require an access person to submit an initial holdings report if the access person has previously provided information equivalent to that which is required in the initial holdings report. Proposed rule 17j–1 also contains several other exceptions to filing initial holdings reports. The Commission therefore estimates, after taking into consideration the number of respondents excluded from this requirement of the rule, that, on average, there will be 4,895 annual responses to this requirement.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 11Ac1–4, SEC File No. 270–405, OMB Control No. 3235–0462

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 11Ac1–4 [17 C.F.R. 240.11Ac1–4] under the Securities Exchange Act of 1934 requires specialists and market makers to publicly display a customer limit order when that limit order is priced superior to the quote that is currently being displayed by the specialist or market maker. Customer limit orders that match the bid or offer being displayed by the specialist or market maker must also be displayed if the limit order price matches the national best bid or offer. It is estimated that approximately 580 specialist and market maker respondents incur an average burden of 5684 hours per year to comply with this rule.

Rule 11Ac1–4 does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential. 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 control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: September 15, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25228 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Existing collection in use without an OMB Number:
Rule 8c–1, SEC File No. 270–455, OMB Control No. 3235—new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of the following rule: Rule 8c–1.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the rehypothecation of customer securities in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecathion of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protection.

There are approximately 258 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 5,805 hours to comply with the rule. Each of these approximately 258 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 11,610 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,805 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondents of $116,100 (5,805 hours @ $20 per hour).

The retention period for the recordkeeping requirement under Rule 8c–1 is three years. The recordkeeping requirement under this Rule is mandatory to ensure that broker-dealer's do not commingle their securities or use them to finance the broker-dealers proprietary business. This rule does not involve the collection of confidential 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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25229 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40441; File No. SR–NASD–98–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to NASD Code of Arbitration Procedure Rule 10335 (Injunctive Relief Rule)

September 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the NASD's Code of Arbitration Procedure ("Code") to clarify and improve the rule and to make it a permanent part of the Code. Below is the text of the proposed rule change. The proposed language (which is italicized) would replace the existing rule (which is in brackets) in its entirety.

* * * * *

RULES OF THE ASSOCIATION

10000. CODE OF ARBITRATION PROCEDURE

10300. UNIFORM CODE OF ARBITRATION

10335. [Injunctions

In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an "interim jurisdiction" from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent jurisdiction, parties may seek a temporary injunction. A party seeking temporary injunctive relief from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. This Rule contains procedures for obtaining an interim injunction. Paragraph (g) of this Rule relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Rule 10314(a).

(a) Single Arbitrator

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed two amendments to the proposed rule change. *See* Letters from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 9, 1998 ("Amendment No. 1") and September 10, 1998 ("Amendment No. 2"). These amendments made several clarifications which are incorporated into this Notice.

Applications for interim injunctive relief shall be heard by a single arbitrator.

(b) Showing Required

In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

(c) Application for Relief

Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicant shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Director of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Rule 10205. Filings and service required under this Rule may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing, file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(e) Challenges to Arbitrators

There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

(f) Hearing on the Merits

Immediately following the issuance of an Immediate or Regular Injunctive Order, the Director shall appoint arbitrators according to the procedures specified in the Code to hear the matter on the merits. The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(g) Effect of Court Injunction

If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

(h) Security

The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom injunctive relief is sought, for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on July 3, 1998, unless extended by the Association's Board of Governors.]

Temporary Restraining Orders

In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties to the arbitration may seek a temporary restraining order within the arbitration process or from a court of competent

jurisdiction. This Rule contains procedures for obtaining this interim relief in arbitration or in court pending completion of an arbitration proceeding. Requests for permanent injunctive relief should be made in the remedies portion of the Statement of Claim, pursuant to Rule 10314(a).

(A) Temporary Restraining Orders in Arbitration

(1) Single Arbitrator; Consolidation

A single arbitrator shall hear applications for a temporary restraining order. At the arbitrator's discretion, multiple requests for relief involving the same applicant or respondent may be consolidated.

(2) Showing Required

In order to obtain a temporary restraining order, the party seeking the relief ("applicant") must meet the standards for obtaining a temporary restraining order of the state in which the events leading to the application occurred.

(3) Application for Relief

An applicant seeking a temporary restraining order shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for a temporary restraining order, and a properly executed Submission Agreement on the party or parties against whom the applicant seeks relief. The applicant shall file the above documents simultaneously and in the same manner with all parties and the Director of Arbitration. The papers filed with the Director of Arbitration should also include three extra copies of each document, proof of service on all parties, and all fees required under Rule 10205. Filings and service required under this Rule may be made by United States mail, overnight delivery service or messenger, or facsimile transmission.

(4) Appointment of Arbitrator

Upon receipt of an application for a temporary restraining order, the Director of Arbitration shall appoint an arbitrator to hear the application. Upon appointment, the arbitrator shall set the initial hearing date.

(5) Challenges to Arbitrator

(a) There shall be unlimited challenges for cause, but no peremptory challenges, to the single arbitrator appointed to hear the application for a temporary restraining order. Parties challenging the arbitrator for cause shall do so by telephone to the Director of Arbitration, and shall confirm such objection immediately in writing, with a copy to all parties.

(b) Parties may not make a peremptory challenge to the arbitrator who has heard an application for a temporary restraining order and subsequently will participate on the arbitrator panel hearing the same case on the merits.

(6) Scheduling of Hearing; Notice to Parties

(a) The arbitrator shall endeavor to schedule a hearing no sooner than one and no later than three business days after the response is filed or due to be filed, whichever comes first.

(b) The Director of Arbitration shall provide to all parties notice of the date, time, and place of the hearing, the name and employment history of the single arbitrator required by Rule 10310, and any information required to be disclosed by the arbitrator pursuant to Rule 10312 via telephone, facsimile transmission, or messenger delivery prior to the hearing.

(c) At the discretion of the arbitrator or the Director of Arbitration, the hearing may be held by telephone or in person in a city designated by the Director of Arbitration.

(7) Filing of Responses

(a) The party against which an applicant seeks a temporary restraining order ("responding party") may respond to the application. A responding party shall serve any response on the applicant and shall file with the Director of Arbitration four copies of the response and proof of service on all parties.

(b) Within time frames set by the arbitrator, the parties shall be permitted to file briefs, affidavits and documentary evidence in connection with the request for a temporary restraining order.

(8) Arbitrator's Decision

The arbitrator shall endeavor to grant or deny the application for a temporary restraining order within one business day after the hearing and record are closed.

(9) Expiration of Temporary Restraining Orders in Arbitration

A temporary restraining order shall expire 10 days from the date of issuance. The arbitrator may extend the temporary restraining order for ten-day periods until a hearing on the merits is held. Notwithstanding the expiration date, a temporary restraining order shall expire upon a decision on the merits of the entire controversy, unless the parties agree otherwise.

(B) Court-Ordered Temporary Restraining Orders

(1) Parties to an arbitration may seek a temporary restraining order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to paragraph (A). However, a party making such a request must do so within five days of when the party knew or should have known or the event or occurrence upon which the request is based. In any event, a party may not seek a temporary restraining order in court after a hearing on the merits in arbitration has convened.

(2) An arbitrator may not issue an order enjoining a party from seeking a temporary restraining order in court. The availability of the temporary restraining order remedy in arbitration is not grounds for a party to seek denial of a temporary restraining order in court. However, a party which has been denied a temporary restraining order in arbitration or in court may not seek the same relief in the other forum.

(3) Parties may not seek discovery in court in connection with a request for a court-ordered temporary restraining order.

(4) A party seeking a temporary restraining order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. A party obtaining a court-ordered temporary restraining order shall notify the Director of Arbitration of the issuance of the order within one business day.

(5) A party obtaining a temporary restraining order in court may not request that the court extend the order's effectiveness beyond an initial ten-day period, unless no arbitrator or panel of arbitrators has been appointed to review the court's order in accordance with paragraph (B)(6) of this Rule.

(6) Review of Court-Ordered Temporary Restraining Order

(a) Upon request by one or more of the parties, the Director of Arbitration shall appoint a three-member.panel of arbitrators to review the court-issued temporary restraining order before expiration of the order. If a three-member panel of arbitrators cannot be appointed before the temporary restraining order expires, the Director of Arbitration may appoint a single arbitrator to review the court-issued temporary restraining order.

(b) There shall be unlimited challenges for cause, but no peremptory challenges, to the arbitrator(s) appointed to review a court-ordered temporary restraining order. Parties challenging the arbitrator(s) for cause shall do so by telephone to the Director of Arbitration, and shall confirm such objection immediately in writing, with a copy of all parties.

(c) the panel or single arbitrator appointed to review the court-ordered temporary restraining order may (i)

issue an order extending the court's order, (ii) issue a temporary restraining order with different terms and conditions than the court's order, or (iii) decline to issue a temporary restraining order. A temporary restraining order issued by the reviewing arbitrator(s) may not become effective until the expiration of the court's order. A temporary restraining order issued by the reviewing arbitrator(s) may be extended for ten-day periods until a hearing on the merits is held.

(d) Within time frames set by the arbitrator(s), the parties shall be permitted to file briefs, affidavits and documentary evidence in connection with the review of a court-ordered temporary restraining order.

(7) Showing Required

In order to obtain an extension of a court-ordered temporary restraining order, the party seeking relief must make the same showing specified in paragraph (A)(2) of this Rule.

(C) Hearing on the Merits

(1) Immediately following the issuance of a temporary restraining order in arbitration, or upon notification to the Director of Arbitration of the issuance of a court-ordered temporary restraining order, the Director of Arbitration shall appoint arbitrators to hear the matter on the merits. The Director of Arbitration shall appoint the arbitrators in the manner specified in the Code, provided, however, that the Director of Arbitration shall have the discretion to expiedite the appointment of the arbitrators to facilitate the expedition of the hering on the merits in accordance with paragraph (C)(3) of this Rule.

(2) If the temporary restraining order was issued by an arbitrator, one of the arbitrators appointed to hear the matter on the merits may be the arbitrator who heard the request for the temporary restraining order. If the temporary restraining order was issued by a court and reviewed by a single arbitrator or a panel of arbitrators, one of the arbitrators appointed to hear the matter on the merits may be an arbitrator who reviewed the court-ordered temporary restraining order; by agreement of the parties, the entire panel of arbitrators may be appointed to hear the matter on the merits.

(3) The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators, but in no event shall proceedings commence more than 28 days from the original filing, unless the parties agree otherwise. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(D) Security

The arbitrator issuing an injunctive relief order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom the temporary restraining order is sought, for the payment of any costs and damages that may be incurred or suffered by that party.

(E) Effective Date

This rule shall apply to arbitration claims filed on or after January 4, 1999. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under 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, NASD Regulation included statements concerning the purpose of the 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. NASD Regulation 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

Rule 10335, the NASD's pilot injunctive relief rule, allows interm injunctive relief to be obtained in controversies involving member firms and associated persons in arbitration. The proposed rule change would amend the rule and make it a permanent part of the Code.

The rule took effect on January 3, 1996 for a one-year pilot period. The Commission extended the initial pilot period twice in order to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether, and in what form, the rule should be made a permanent addition to the Code. The rule is currently due to expire on January 3, 1999.[4]

a. Summary of the Current Rule. Rule 10335 currently provides, among other things, that: (i) Parties may seek temporary injunctive relief either in court or in arbitration; (ii) Parties who seek temporary injunctive relief in court must simultaneously submit the claim to arbitration for permanent relief; (iii) Parties may obtain interim injunctive relief in arbitration rather than in court in the form of either an Immediate Injunctive Order or a Regular Injunctive Order; (iv) Permanent injunctive relief may be obtained in arbitration as part of the final relief sought by a party in connection with a claim; (v) Applications for interim injunctive relief are expedited; and (vi) Where a court grants interim injunctive relief to one of the parties, arbitration proceedings on the dispute must be expendited.

b. Notice to Members 97–59. The proposed rule change is based in part on responses to Notice to Members (97–59), published in November 1997, and on NASD Regulation's Office of Dispute Resolution staff's experience with the pilot rule. At the time the Notice to Members was published, approximately 433 cases had been filed in which injunctive relief was sought pursuant to the pilot rule. The average number of days between filing and the arbitrator's initial injunctive relief order was approximately 7.5 days. The majority of cases in which injunctive relief was sought involved the transfer of associated persons from one firm to another. In most but not all cases, the associated person's former firm was the petitioner.

The Notice to Members sought comment on how the pilot injunctive relief rule and expedited proceedings work and how they could be improved, and identified more than twenty specific questions based on previous comments received from users of the pilot rule. The comment letters received in response, which are attached to the proposed rule change as Exhibit 3, reflected a wide range of opinions about the rule.[5] While a few commenters advocated eliminating the rule entirely, most expressed support for the availability of injunctive relief in arbitration proceedings. One general concern regarding the functioning of the rule was the length of time needed to obtain injunctive relief under the rule. Most commenters also indicated that the temporary relief available under the rule

[4] The Commission recently approved a related rule filing (File No. SR–NASD–98–42) to extend the pilot rule through January 3, 1999. *See* Securities Exchange Act Release No. 40124 (June 24, 1998), 63 FR 37282 (July 2, 1998).

[5] The comments contained in Exhibit 3 pertain to the pilot injunctive relief rule and not to the proposed rule change.

should be subject to time limits, as are temporary restraining orders and preliminary injunctions available in court. Most also agreed that the current terminology used in the rule, which refers to Immediate and Regular Injunctive Orders, should be changed to be consistent with the terminology used in courts. With some dissenters, most also agreed that arbitrators should have some authority to modify injunctive relief granted by a court, at least once an expedited arbitration hearing on the merits has commenced. The comments reflected less uniformity on issues such as hearing procedures and forum-shopping.

c. The Proposed Amendments. The principal objectives of the proposed amendments are: (1) to simplify and expedite the injunctive relief process in arbitration; (2) to set time limits on injunctive relief issued pursuant to the rule; and (3) to clarify the rules relating to obtaining a court-ordered temporary restraining order, and the effect of such an order on the subsequent arbitration process.

i. *Availability of Injunctive Relief in Arbitration.*

Under the current rule, parties may seek either an Immediate Injunctive Order or a Regular Injunctive Order in arbitration, which are roughly parallel to temporary restraining orders and preliminary injunctions available in court. The rule does not currently impose any time limits on the orders issued, and does not specify what standard should be applied in deciding applications for injunctive relief. Commenters responding to Notice to Members 97–59 complained that the terminology is confusing, that the lack of standards has created uncertainty, and that the lack of time limits permits parties who obtain relief to pressure the enjoined party to settle by delaying the hearing on the merits.

Under the proposed amendments, the Regular Injunctive Order would be abolished, and the Immediate Injunctive Order would be replaced by a temporary restraining order, to track the terminology used in court. Applications for temporary restraining orders would be heard by a single arbitrator, who would be appointed within three days of the filing of an application for relief. The rule would permit unlimited challenges for cause to the arbitrator appointed to hear the request for the temporary restraining order, but would prohibit peremptory challenges.

Temporary restraining orders issued in arbitration would expire after ten days, but could be extended by the single arbitrator for additional ten-day periods until the commencement of a hearing on the merits, which would be required to occur within 28 days of the original filing of the Statement of Claim. A party who sought and was denied a temporary restraining order in court would also be able to request an expedited hearing under the rule.

Under the proposed amendments, the legal standards for obtaining a temporary restraining order in arbitration would be changed to the standards of the law of the state in which the events giving rise to the application occurred. The pilot rule specified a legal standard in part because the kind of injunctive relief available under the rule differed from the kind of injunctive relief available in court. Therefore, reference to state law standards in the pilot rule would not have been practical. The proposed rule change would replace the kinds of injunctive relief available under the pilot rule with temporary restraining orders, which are available in court. Since state law standards for granting temporary restraining orders are well-developed, the rule can now reference state law standards and eliminate its own forum standard.

The proposed rule would make clear that, within the time frames set by the arbitrator, parties could file briefs, affidavits and other evidence in connection with a request for a temporary restraining order.

ii. *Availability of Injunctive Relief in Court*

One of the most controversial issues regarding the pilot rule has been whether or not parties should be able to continue to seek a temporary restraining order in court if the same relief is available in arbitration. Some parties and commenters concerned about the ability to obtain immediate relief have opposed the elimination of the court option. Others have expressed concern that permitting parties to seek relief in court that is also available in arbitration encourages forum-shopping and undermines the arbitration process.

The proposed amendments relating to the availability and effect of a court-ordered temporary restraining order are intended to balance these concerns. The rule would preserve the ability of parties to seek temporary restraining orders in court as an alternative to doing so in arbitration, and would make clear that the availability of a temporary restraining order remedy in arbitration is not grounds for denial of a temporary restraining order request in court. However, parties who sought and were denied a temporary restraining order in one forum would be barred from seeking the same relief in the other forum.

The rule would also clarify that the filing of a claim by one party in arbitration is not a bar to a party seeking a temporary restraining order in court, and that an arbitrator would be prohibited from issuing an order enjoining a party from seeking a court-ordered temporary restraining order. However, when a claim had been filed in arbitration, a party seeking a temporary restraining order in court would have to file in court within five days of when the party knew or should have known of the conduct or event giving rise to the request, and a party would not be able to seek a temporary restraining order in court once a hearing on the merits in arbitration has commenced.

Once a temporary restraining order is issued by a court, the rule would require the Director of Arbitration, if requested by one or more of the parties, to appoint a panel of three arbitrators to review the order within ten days. The rule prohibits a party from requesting extension of the court order beyond the initial ten-day period. If the Director of Arbitration was unable to appoint a panel in that time, the rule would permit the Director to appoint a single arbitrator to review the order. The rule would prohibit a party from asking a court to extend a temporary restraining order unless no panel or arbitrator has been appointed to review the order before the temporary restraining order expires.

Upon expiration of the court's order, the panel or arbitrator appointed to review a court-ordered temporary restraining order could issue or decline to issue a new order. A new order issued by the panel or single arbitrator might be identical to the court's order, or might vary in some or all respects. Such an order would be effective for ten days, and could be extended for additional ten-day periods until a hearing on the merits commenced. Although the panel or arbitrator may issue a new order upon expiration of the court order, arbitrators do not have the authority to extend, vacate or modify a court order.

As in the case of temporary restraining orders sought in arbitration, once a temporary restraining order is issued by a court, a hearing on the merits would be required to be held within 28 days of the original filing of the Statement of Claim. A party who sought and was denied a temporary restraining order in court could still request an expedited hearing under the rule.

(2) Basis

NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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

NASD Regulation did not solicit comments with respect to the proposed rule change. However, the proposed rule change is based in part on written comments received in response to Notice to Members 97–59. A copy of the Notice to Members and copies of the comment letters received in response to the Notice were attached as exhibits to the rule filing.

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 Association consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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, 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 NASD. All submissions should refer to File No. SR–NASD–98–49 and should be submitted by October 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25290 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S8 for the Office of the Inspector General (OIG) is being amended to reflect the establishment of the Office of External Affairs (S8K). Further notice is given that Chapter S8 is being amended to reflect organizational realignments within the Office of Audit (OA) (S8C) and functional realignments within the Office of Management Services (OMS) (S8G). The changes are as follows:

Section S8.10 *The Office of the Inspector General*—(Organization):

Establish:

H. The Office of External Affairs (S8K).

Section S8.20 *The Office of the Inspector General*—(Functions):

F. The Office of Management Services (S8G). Delete from the last sentence "public affairs * * * Congressional inquiries."

Establish:

H. The Office of External Affairs (S8K).

Section S8C.20 *The Office of Audit*—(Functions):

Retitle:

D. "The Evaluations and Technical Services Division (ETSD) (S8CB) to "The Management Audits and Technical Services Division (MATSD) (S8CB)."

Amend to read as follows:

The Division performs audits and evaluations of administrative and other non-program functions performed by SSA. It monitors SSA performance in accordance with the Government Performance and Results Act by performing an oversight role as well as performing audits and evaluations of SSA program and administrative functions. The Division also leads the SSA Payment Accuracy Task Force Initiative to improve SSA's benefit payment accuracy. Additionally, the Division provides Headquarters administrative support and technical support to the entire Office of Audit.

Section S8G.00 *The Office of Management Services*—(Mission):

Delete from the last sentence "public affairs * * * Congressional inquiries."

Section S8G.20 *The Office of Management Services*—(Functions):

Delete from the last sentence in item 3 "public affairs * * * Congressional inquiries."

Add Subchapter:

Subchapter S8K Office of External Affairs

S8K.00 Mission
S8K.10 Organization
S8K.20 Functions

Section S8K.00 *The Office of External Affairs*—(Mission):

The Office of External Affairs (OEA) is responsible for public affairs, interagency activities, OIG reporting requirements and publications and Congressional inquiries. OEA is also responsible for directing reviews and actions to ensure the adequacy of OIG compliance, quality assurance and internal control programs.

Section S8K.10 *The Office of External Affairs*—(Organization):

The Office of External Affairs (S8K), under the leadership of the Assistant Inspector General for External Affairs, includes:

A. The Assistant Inspector General for External Affairs (S8K).

B. The Immediate Office of the Assistant Inspector General for External Affairs (S8K).

Section S8K.20 *The Office of External Affairs*—(Functions):

A. The Assistant Inspector General for External Affairs (S8K) is directly responsible to the Inspector General for carrying out the Office of External

Affairs mission and providing general supervision to the major components of OEA.

B. The Immediate Office of the Assistant Inspector General for External Affairs (S8K) provides the Assistant Inspector General with staff assistance on the full range of their responsibilities.

Dated: August 27, 1998.

James G. Huse,

Acting Inspector General for Social Security.

[FR Doc. 98–25215 Filed 9–21–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2893]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Judgments Meeting Notice

There will be a public meeting of the Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law on Friday, October 2, 1998, from 9:30 AM to 4:30 PM in Room 1105 of the main building of the U.S. Department of State, 2201 C Street, N.W., Washington, D.C.

The purpose of the meeting is to review various legal issues related to the project of the Hague Conference on Private International Law to prepare by 2000 a multilateral convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The October 2 Study Group meeting and the advice provided by attending persons and organizations will assist the Department of State and the U.S. delegation to prepare for the November 10–20, 1998, third session of the Hague Conference's Special Commission that is charged with preparing a draft convention on this topic.

Specifically, at the November Special Commission session at The Hague will discuss and reach decisions on various proposals made by country delegations at previous meetings in June 1997 and March 1998. Such decisions will make it possible for the Special Commission and its drafting committee to prepare a first draft of the convention. The draft provisions prepared as a result of the November 1998 session will then be reviewed and refined at the fourth session of the Special Commission in June 1999. There will be a diplomatic session of the Hague Conference in 2000 to adopt the final text of the convention.

Among the issues on which at least preliminary decisions may be made in November are the scope of the convention, excluded areas of law, required and prohibited bases of jurisdiction for actions in contract, tort and product liability, choice of court and exclusive bases of jurisdiction, the structure of the convention, forum non conveniens, lis pendens, provisional and protective measures, notification, irreconcilable decisions, recognition/enforcement procedures and the role of the court addressed, public policy exceptions to recognition and enforcement, uniform interpretation, and how the convention should operate in federal states.

Persons interested in attending the October 2 Study Group meeting may request the report on the March 1998 Special Commission session and the compilation that is in preparation by the Hague Conference's Permanent Bureau of delegation proposals for dealing with various issues, which will be the basic working document for the November session at The Hague. Requests for documents may be sent to Ms. Rosie Gonzales by fax at (202) 776–8482, by phone at (202) 776–8420 (you may leave your request, name, phone number and address on the answering machine) or by email to <pildb@his.com<.

The Study Group meeting is open to the public up to the capacity of the meeting room. As access to the State Department building is controlled, any person wishing to attend should by no later than Wednesday, September 30 provide Ms. Gonzales with his or her name, Social Security number and birth date to facilitate admission to the building. It would also be helpful to include affiliation, address, fax and phone numbers, and email addresses for purposes of updating the Department's address list. Participants should be sure to use only the C Street ("diplomatic") entrance of the State Department, on C Street, N.W. between 21st and 23rd Streets, where someone will be present to assist them.

Those unable to attend but wishing to have their views considered may send their views to Ms. Gonzales at the above fax number or email address, or to the following address: L/PIL, Room 357 South Building, 2430 "E" Street, N.W., Washington, D.C. 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 98–25272 Filed 9–21–98; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (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 extension of a currently approved collections. 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 July 1, 1998 (63 FR, 36010).

DATES: Comments must be submitted on or before October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Rita Daguillard, Office of the Chief Counsel at (202) 366–1936 and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Federal Transit Administration (FTA)

Title: Charter Service Operations.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2132–0543.

Form(s): N/A

Affected Public: State and local government, business or other-for-profit government institutions, and non-profit institutions).

Abstract: Section 5323(d) of the Federal Transit Laws (FT Laws) requires all applicants for financial assistance from FTA to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR 1.51(a)). Section 5323(d) of the FT Laws provides protections for private intercity charter bus operators from unfair competition by FTA recipients. Section 5302(a)(7) of the FT Laws as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right, to provide charter bus service with FTA funded facilities and equipment only if it is incidental to the provision of mass transportation service. These statutory requirements have been implemented in FTA's charter regulation, 49 CFR part 604. 49 CFR 604.7 requires all

applicants for financial assistance under Section 5309, 5336, or 5311 of the FT Laws to include two copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. The applicant signs the agreement, but FTA executes it only upon approval of the application. This is a one-time submission with incorporation by reference in subsequent grant applications. Section 604.11(b) requires recipients to provide notice to all private charter operators and allow them to demonstrate that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published in a newspaper and sent to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. To continue receiving federal financial assistance, recipients must publish this notice annually. Section 604.13(b) requires recipients to notify each private operator that presented evidence of the recipient's determination whether the private operator meets the definition of "willing and able." This notice is also an annual requirement. On December 30, 1988, FTA issued an amendment to the Charter Service Regulation which allows additional exceptions for certain non-profit social service groups that meet eligibility requirements.

Estimated Annual Burden Hours: 1,984.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention OST 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.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on September 17, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–25303 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 11, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4428.

Date Filed: September 8, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0326 dated August 21, 1998 r1–25; PTC COMP 0327 dated August 21, 1998 r26–31; PTC COMP 0332 dated August 28, 1998; Minutes: Intended effective date: April 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–25304 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 11, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4439.

Date Filed: September 11, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 9, 1998.

Description: Application of Air Nippon Co., Ltd. pursuant to 49 U.S.C. Section 41301 and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in the foreign air transportation of persons, property and mail on the following routing; between any point or points behind Japan and any point or points in Japan, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–25305 Filed 9–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

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

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 13, 1998.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are

filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 16, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29297.
Petitioner: Aviation Charter, Inc.
Sections of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought: To permit Aviation Charter, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Dispositions of Petitions

Docket No.: 28445.
Petitioner: Aircraft Braking Systems Corporation.
Sections of the FAR Affected: 14 CFR 43.9(a)(4) and 43.11(a)(3).
Description of Relief Sought/ Disposition: To permit Aircraft Braking Systems Corporation to continue to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements. *GRANT, July 31, 1998, Exemption No. 6542A.*

Docket No.: 23216.
Petitioner: McMahan Aviation, Inc.
Sections of the FAR Affected: 14 CFR 93.157.
Description of Relief Sought/ Disposition: To permit McMahan Aviation, Inc., to conduct pipeline patrol operations under special visual flight rules at the George Bush Intercontinental Airport/Houston Airport. *GRANT, August 17, 1998, Exemption No. 4505A.*

Docket No.: 28723.
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 91.203 (a) and (b).
Description of Relief Sought/ Disposition: To permit Ryan International Airlines, Inc., to operate temporarily its U.S.-registered aircraft following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both. *GRANT, August 27, 1998, Exemption No. 6571A.*

Docket No.: 29106.
Petitioner: Forest Industries Flying Tankers Limited.
Sections of the FAR Affected: 14 CFR 61.55(a).
Description of Relief Sought/ Disposition: To permit Forest Industries Flying Tankers Limited to operate its Martin JRM–3 Mars airplanes in the United States with an aircraft maintenance engineer, instead of a qualified pilot as required by the aircraft's type certificate, occupying the position of second in command. *GRANT, August 28, 1998, Exemption No. 6809.*

[FR Doc. 98–25307 Filed 9–21–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 98–01–C–00–GRI to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Central Nebraska Regional Airport, Grand Island, NE

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

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Central Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 22, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Shari Hickman at the following address: Hall County Airport Authority, 3743 N. Sky Park Road, Grand Island, NE 68801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hall County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Central Nebraska Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 4, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Hall County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February, 1999.

Proposed charge expiration date: April, 2000.

Total estimated PFC revenue: $50,370.

Brief description of proposed project(s): Update airport master plan; replace snowplow; replace runway broom.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hall County Airport Authority.

Issued in Kansas City, Missouri on August 5, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–25306 Filed 9–21–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33655]

Wisconsin Central Ltd.—Trackage Rights Exemption—Sault Ste. Marie Bridge Company and Fox Valley & Western Ltd.

Sault Ste. Marie Bridge Company (SSAM) and Fox Valley & Western Ltd. (FVW) have agreed to grant non-exclusive overhead trackage rights to Wisconsin Central Ltd. (WCL):[1] (1) over SSAM's line of railroad between milepost 92.1, at Powers, MI, and milepost 4, at Duck Creek, WI, including access to FVW's main line at Duck Creek (milepost 4), a distance of approximately 88.1 miles; and (2) over FVW's line of railroad between milepost 4, at Duck Creek, and milepost 1.4, at North Green Bay, WI, including access to WCL's pre-existing rights at North Green Bay, a distance of approximately 2.6 miles.

The purpose of the trackage rights is to provide more efficient service by WCL between its lines in the Upper Peninsula of Michigan and the Fox Valley Area of Wisconsin.

As a condition to this exemption, any employees affected by the trackage rights will be protected as required by 49 U.S.C. 11326(b), subject to the procedural interpretations of the analogous statutory provisions at 49 U.S.C. 10902 contained in the Board's decision in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company,* STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*).

The transaction was scheduled to be consummated on or after September 11, 1998.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 33655, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Esq., Wisconsin Central Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 15, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25332 Filed 9–21–98; 8:45 am]

BILLING CODE 4915–00–P

[1] SSAM is a Class III railroad. FVW and WCL are Class II railroads.

[2] The notice to employees discussed in *WCL Exemption* and adopted as a requirement for certain transactions in *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions,* STB Ex Parte No. 562 (STB served Sept. 9, 1997), does not apply to exempt trackage rights transactions.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33656]

Wisconsin Central Ltd. and Sault Ste. Marie Bridge Company—Joint Relocation Project Exemption—Hermansville, MI, to North Escanaba, MI

On September 4, 1998, Wisconsin Central Ltd. (WCL), a Class II railroad, and Sault Ste. Marie Bridge Company (SSAM), a Class III railroad, filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain lines of railroad from Hermansville, MI, to North Escanaba, MI.

Between Hermansville and North Escanaba, WCL and SSAM currently own and operate adjacent and parallel lines of railroad. The WCL MS Line runs, in part, from WCL milepost 310.75, in Hermansville, where it meets in a diamond with the SSAM MS Line, to WCL milepost 336.25, in North Escanaba (WCL Line). The SSAM MS Line runs, in part, from SSAM milepost 4.1, in Hermansville, where it meets in a diamond with WCL's MS Line, to SSAM milepost 0.0/92.1, in Powers, MI, where it meets SSAM's FV Line, and on to milepost 113.0 in North Escanaba (SSAM Line). Both the WCL Line and the SSAM Line run in a generally east-west direction. The joint relocation project will reroute operations from, and allow removal of, one of these duplicative rail lines, thus simplifying rail operations and accommodating efforts to reduce rail interference with vehicular traffic.

Under the joint project, WCL and SSAM propose the following transactions:

(1) WCL will abandon its line of railroad on the WCL Line from milepost 310.75, in Hermansville, to milepost 336.25, in North Escanaba, a distance of approximately 25.5 miles.

(2) SSAM will discontinue its trackage rights operations on the WCL Line from milepost 310.75, in Hermansville, to milepost 336.25, in North Escanaba, a distance of approximately 25.5 miles.

(3) WCL and SSAM will construct a connecting track of approximately nine-tenths of a mile between the WCL Line, at WCL milepost 336.25, and the SSAM Line, at SSAM milepost 113.0. This will connect the SSAM Line with the WCL tracks in North Escanaba. WCL will own the northern portion of the connection track (milepost 336.25 to milepost 335.85), while SSAM will own the southern portion of the connection track (milepost 113.5 to milepost 113.0).

(4) SSAM will grant WCL trackage rights[1] over the SSAM Line between SSAM milepost 4.1, in Hermansville, through SSAM milepost 0.0/92.1 in Powers, MI, to SSAM milepost 113.0, in North Escanaba, and from there: (a) To the division of ownership of the new connecting track, at SSAM milepost 113.5, in North Escanaba; and (b) to SSAM milepost 118.0, in Larch, MI, a total distance of approximately 30.5 miles.

(5) WCL will grant SSAM trackage rights from the division of ownership of the new connecting track, at WCL milepost 335.85, in North Escanaba, through WCL milepost 336.25, in North Escanaba, to WCL milepost 342.7. in Gladstone, MI.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the joint relocation project will be protected as

[1] WCL's existing trackage rights over the SSAM Line from Hermansville through Powers and North Escanaba to Larch, MI, will be superseded and expanded by these new rights.

required by 49 U.S.C. 11326(b), subject to the procedural interpretations of the analogous statutory provisions at 49 U.S.C. 10902 contained in the Board's decision in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*).

The transaction was scheduled to be consummated on or after September 11, 1998.[2]

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 STB Finance Docket No. 33656, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Esq., Wisconsin Central Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 15, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25333 Filed 9–21–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announce public meeting of IRS Advisory Council.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting on Tuesday, October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Merci del Toro, Office of Public Liaison and Small Business Affairs, CL:PL, Room 7559, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: 202–622–5081, not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on October 6, 1998, beginning at 8:30 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Among the issues to be discussed are: IRS modernization impact on the Chief Counsel, Taxpayer Advocate, and Appeals programs, as well as on the geographic relationship between IRS and taxpayer representatives; electronic filing by Circular 230 practitioners; Notice Redesign; Appeals communication process improvements; the new IRS mission statement; Restructuring legislation implementation; small business program; non-compliance study; and measurements. In addition, IRS executives will make presentations about several program improvement efforts.

Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–6440 (not a toll-free number). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111 Constitution Avenue, NW entrance.

If you would like for the IRSAC to consider a written statement, please call (202) 622–5081 or write: Merci del Toro, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, NW., room 3308, Washington, DC 20224.

Dated: September 14, 1998.

Susanne M. Sottile,

Designated Federal Official, National Director, Office of Public Liaison and Small Business Affairs.

[FR Doc. 98–25340 Filed 9–21–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Love and War: A Manual for Life in the Late Middle Ages"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, "Love and War: A Manual for Life in the Late Middle Ages" (see list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The National Gallery of Art, Washington, DC, from on or about November 8, 1998, through on or about January 31, 1999, and the Frick Collection, New York, NY, from on or about May 11, 1999, through on or about July 5, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency 301 4th Street, S.W. Washington, D.C. 20547–0001.

Dated: September 16, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–25277 Filed 9–21–98; 8:45 am]

BILLING CODE 8230–01–M

[2] The notice to employees discussed in *WCL Exemption* and adopted as a requirement for certain transactions in *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions*, STB Ex Parte No. 562 (STB served Sept. 9, 1997), does not apply to exempt joint relocation project transactions.

Corrections

Federal Register
Vol. 63, No. 183
Tuesday, September 22, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40018; IC–23200; File No. S7–25–97]

RIN 3235–AH20

Amendments To Rules On Shareholder Proposals

Correction

In rule document 98–14121, beginning on page 28106, in the issue of May 28, 1998, make the following corrections:

1. On page 28106, in the first column, in the **SUMMARY** section, in the sixth line, "Format" should appear as "format".

2. On the same page, same column, in the **FOR FURTHER INFORMATION CONTACT:** section, in the second line, "of" should read "or".

3. On the same page, in the second column, in footnote 5, in the first line, "See" should appear "*See*" and in the second line, "No. 29093" should read "No. 39093".

4. On the same page, same column, in footnote 7, in the first line, "See" should appear as "*See*" and in the seventh line, "the" should appear as "The".

5. On the same page, same column, in footnote 8, in the first line, "See" should appear as "*See*".

6. On the same page, in the third column, in footnote 9, in the first line, "See" should appear as "*See*".

7. On the same page, same column, in footnote 12, in the third line, "See" should appear as "*See*".

8. On page 29107, in the first column, in the second full paragraph, in the first line, "plain—English" should appear as "plain-English".

9. On the same page, same column, in footnote 15, in the first line, "Rule 14-8(c)(1)" should read "Rule 14a8(c)(1)".

10. On the same page, same column, in footnote 20, in the tenth line, "e.g." should appear as "*e.g.*".

11. On the same page, in the second column, in the first paragraph, in the fifth line from the bottom, "term-Of-art" should appear as "term-of-art".

12. On the same page, in same column, in footnote 23, in the third and fourth lines, "Long View" should appear as "LongView".

13. On the same page, in the third column, under **III. The Interpretation of Rule 14a-8(c)(7): The "Ordinary Business" Exclusion**, in the first paragraph, the indented material (in small type), in the eighth line, "The fact" should appear as "the fact".

14. On page 29108, in the first column, the indented paragraph beginning with "We" should not be indented.

15. On the same page, same column, in footnote 39, in the last line, "Dec. 26, 1976" should read "Dec. 26, 1996".

16. On the same page, in the second column, in the fourth full paragraph, in the third line, "related" should read "relates".

17. On page 29109, in the first column, in the first full paragraph, in the third line "micromanagement" should appear as "micro-management".

18. On the same page, in the second column, in footnote 50, in the second line, "LongView Letter," should appear as "LongView Letter;".

19. On the same page, in the third column, in footnote 54, in the sixth line, "rules" should read "rule's".

20. On page 29110, in the third column, in the second line, "cares" should read "cards".

21. On page 29111, in the first column, in footnote 66, in the second line, "Long View" should appear as "LongView".

22. On the same page, in the second column, in footnote 67, in the first and fourth lines, "versus" should read "v.".

23. On page 29112, in the third column, in footnote 80, in the fifth line, "which proponent" should read "which a proponent".

24. On page 29113, in the first column, under *The "Relevance" Exclusion*, in the third line, the indented material (in small type), "Relating" should not be indented and should appear as "relating".

25. On the same page, in the third column, under **VII. Final Regulatory Flexibility Analysis**, in the second paragraph, in the ninth line, "(Investment Company Act")." should appear as "("Investment Company Act")."

26. On the same page, same column, same entry, in the third paragraph, in the last line of the fifth bullet entry, "business," should appear as "business;".

27. On page 29114, in the first column, under *Plain-English Question & Answer Format*, in the first paragraph, in the sixth line, "provisions" should appear as "provisions." and in the seventh line, "companies" should appear as "Companies".

28. On the same page, same column, same entry, in the second paragraph, in the first line "comments" should read "commenters".

29. On page 29115, in the first column, in the 15th line, "110" should read "100".

30. On page 29117, in the third column, in footnote 118, "U.S.C. 78w(a)" should appear as "U.S.C. 78w(a).".

31. On page 29118, in the second column, under **X. Statutory Basis and Text of Amendments**, in the first paragraph, in the fifth line, "1943" should read "1934".

32. On the same page, same column, under **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**, the amendatory instruction designated as "a." should be designated as "2.".

§ 240.14a-4 [Corrected]

33. On page 29118, in the third column, in paragraph (iii), in the last line, "carry out" should read "carry the".

§ 240.14a-8 [Corrected]

34. On page 29119, in the third column, in paragraph (c) *Question 3:*, in the second line, "submit:" should appear as "submit?".

35. On page 29120, in the first column, under (h)*Question 8:*, in paragraph (2), in the first line, 'it" should read "its".

36. On the same page, in the second column, under (2) *Violation of law:*, in the *Note to paragraph (i)(2):*, in the fifth line, "could" should read "would"; in (5) *Revelance:*, in the sixth line, "earning sand" should read "earnings and"; and in (9) *Conflicts with company's proposal:*, in the last line,

"meeting." should appear as "meeting;".

37. On page 29121, in the first column, under (m) *Question 13:*, in paragraph (2), in the fifth line, "§240.142-9" should read "§240.14a-9".

BILLING CODE 1505-01-D

federal register

Tuesday
September 22, 1998

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 240
Qualifications for Locomotive Engineers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 10]

RIN 2130–AA74

Qualifications for Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In January 1997, FRA convened a working group comprised of rail industry and labor representatives to recommend revisions to FRA's requirements for the qualification and certification of locomotive engineers (49 CFR Part 240). The working group examined data, discussed the successes and failures of the current rule, and debated how to improve the regulations over a ten month period. This notice of proposed rulemaking (NPRM) contains miscellaneous proposed amendments derived from those working group meetings. In particular, the FRA proposes to: Improve the decertification process; clarify when certified locomotive engineers are required to operate service vehicles; and address the concern that some designated supervisors of locomotive engineers are insufficiently qualified to properly supervise, train, or test locomotive engineers.

DATES: Written comments concerning this rule must be received no later than November 23, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Requests for a public hearing must be made by October 22, 1998. Any person interested in requesting a hearing should contact Ms. Renee Bridgers, Docket Clerk, at (202) 493–6030 or submit a written request to the address shown below.

ADDRESSES: Written comments (three copies) concerning this rule should be submitted to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street S.W., Mail Stop 10, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self addressed, postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during normal business hours both before and after the closing date for comments in Room 7051 at 1120 Vermont Avenue, NW, Washington, D.C. 20005. All hand deliveries should be made to the Seventh Street address.

In the very near future, FRA's docket system will be integrated with the centralized DOT docket facility which will enable the public to view all documents in a public docket through the Internet. At that time, all comments received in this proceeding will be transferred to the central docket facility and all subsequent documents relating to this proceeding will be filed directly in, and be available for inspection through, the centralized docket system. A notice of the docket system change with complete filing and inspection information will be published in the **Federal Register** at the appropriate time.

FOR FURTHER INFORMATION CONTACT: John Conklin, Operating Practices Specialist, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–493–6318); Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–11, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6049); or Mark H. McKeon, Regional Administrator, 55 Broadway, Cambridge, MA 02142 (telephone: 617–494–2243).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 4 of the Rail Safety Improvement Act of 1988 ("RSIA"), Pub. L. 100–342, 102 Stat. 624 (June 22, 1988), later amended and recodified by Pub. L. 103–272, 108 Stat. 874 (July 5, 1994), requires that FRA issue regulations to establish any necessary program for certifying or licensing locomotive operators. This statutory requirement was adopted in the wake of an Amtrak/Conrail accident at Chase, Maryland which was caused by a failure in human performance. Congress thus determined the existence of a safety need for regulations concerning the qualifications of engineers.

In addition to the general need for regulations, Congress required that certain subject areas be addressed within those regulations. Now codified at 49 U.S.C. § 20135, the amended statute currently provides in pertinent part as follows:

(a) General.—The Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.

(b) Program requirements.—The program established under subsection (a) of this section—

(1) shall be carried out through review and approval of each railroad carrier's operator qualification standards;

(2) shall provide minimum training requirements;

(3) shall require comprehensive knowledge of applicable railroad carrier operating practices and rules;

(4) except as provided in subsection (c)(1) of this section, shall require consideration, to the extent the information is available, of the motor vehicle driving record of each individual seeking licensing or certification, including—

(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the prior 5 years; and

(B) any conviction within the prior 5 years of an offense described in section 30304(a)(3)(A) or (B) of this title;

(5) may require, based on the individual's driving record, disqualification or the granting of a license or certification conditioned on requirements the Secretary prescribes; and

(6) shall require an individual seeking a license or certification—

(A) to request the chief driver licensing official of each State in which the individual has held a motor vehicle operator's license within the prior 5 years to provide information about the individual's driving record to the individual's employer, prospective employer, or the Secretary, as the Secretary requires; and

(B) to make the request provided for in section 30305(b)(4) of this title for information to be sent to the individual's employer, prospective employer, or the Secretary, as the Secretary requires.

(c) Waivers.—(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2)(A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension, successfully completes a

rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or

(B) the cancellation, revocation, or suspension of the individual's motor vehicle operator's license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) Opportunity for hearing.—An individual denied a license or certification or whose license or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hearing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) Opportunity to examine and comment on information.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.

II. Regulatory Background

One year and a half after the passage of the RSIA, FRA published an NPRM which proposed a certification program for locomotive operators. 54 FR 50890 (Dec. 11, 1989). FRA noted that in the preamble to the final rule that some of the comments received in response to this NPRM suggested "significant misunderstanding of the proposal." 56 FR 28228, 28229 (June 19, 1991). These misunderstandings and the appropriateness of the approach were addressed thoroughly in the final rule's preamble. 56 FR 28228, 28229–30 (June 19, 1991).

The final rule establishing minimum qualification standards for locomotive engineers is a certification program, not a licensing program. In summary, the rule requires railroads to have a formal process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. The procedures require that railroads: (1) Make a series of four determinations about a person's competency; (2) devise and adhere to an FRA-approved training program for locomotive engineers; and (3) employ standard methods for identifying qualified locomotive engineers and monitoring their performance. At the time of publication, FRA noted that the agency "is adopting this regulation to minimize the potentially grave risks posed when unqualified people operate trains." 56 FR 28228 (June 19, 1991).

In 1993, less than two years after the publication of the final rule, an interim final rule was promulgated "in response to petitions for reconsideration and requests for clarification." 58 FR 18982 (Apr. 9, 1993). Some of the issues addressed in this rule included: (1) The application of the rule to service vehicles which could potentially function as a locomotive or train; (2) the application of the rule to certain minimal, incidental and joint operations; (3) the application of the rule to events involving operational misconduct by a locomotive engineer; (4) the application of the rule to current railroad practices for storing data electronically; (5) the application of the rule to events involving testing and evaluation of a locomotive engineer's knowledge or skills; (6) the application of the procedural provisions of the rule to events involving denial, suspension and revocation of certification; and (7) technical changes to correct minor errors in the rule text. FRA did not provide additional notice and request for public comment prior to making the amendments contained in this interim final rule. "FRA concluded that such notice and comment were impractical, unnecessary and contrary to the public interest since FRA is, for the most part, only making minor technical changes in response to requests for reconsideration of issues that were previously the subject of detailed notice and extensive comment in the development of the initial final rule in this proceeding." 58 FR 18982, 19002 (Apr. 9, 1993). In addition, FRA stated that delay in the effective implementation of this interim rule could result in the diversion of significant resources by all persons and entities effected by this rule. Meanwhile, this interim final rule guaranteed a full opportunity to comment on the amendments.

In 1995, after approximately four years and four months had passed since the initial final rule, FRA issued a second interim final rule. This second interim final rule contained minor modifications that clarified existing procedural rules applicable to the administrative hearing process; a series of changes made to provide for omitted procedures; and changes to correct typographical errors and minor ambiguities that had been detected since the rule's issuance. 60 FR 53133 (Oct. 12, 1995). Since the Administrative Procedure Act, specifically 5 U.S.C. § 553(b)(3), provides that no notice and comment period is required when an agency modifies rules of internal procedure and practice, FRA issued this regulation without provision of such a period of comment prior to its adoption. 60 FR 53133, 53135 (Oct. 12, 1995). However, FRA did provide for a 30 day comment period subsequent to the publication of this interim final rule and stated that any comments received would be considered to the extent practicable.

III. The Railroad Safety Advisory Committee

In 1994, FRA established its first formal regulatory negotiation committee to address roadway worker safety. This committee successfully reached consensus conclusions and recommended an NPRM to the Administrator, persuading FRA that a more consensual approach to rulemaking would likely yield more effective, and more widely accepted, rules. Additionally, President Clinton's March 1995 Presidential Memorandum titled "Regulatory Reinvention Initiative" directed agencies to expand their efforts to promote consensual rulemaking. FRA therefore decided to move to a collaborative process by creating a Railroad Safety Advisory Committee (RSAC or the Committee) pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

RSAC was established to provide recommendations and advice to the Administrator on development of FRA's railroad safety regulatory program, including issuance of new regulations, review and revision of existing regulations, and identification of non-regulatory alternatives for improvement of railroad safety. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) is the Chairperson of the Committee. The revisions proposed in this NPRM originated from the deliberations of RSAC.

At an RSAC meeting that began on October 31, 1996 and ended on November 1, the Committee agreed to take on the task of proposing miscellaneous revisions to the

regulations addressing Locomotive Engineer Certification (49 CFR Part 240). See 61 FR 54698 (Oct. 21, 1996). The Committee members delegated responsibility for creating a proposal to a working group consisting of the members' representatives. The Qualification and Certification of Locomotive Engineers Working Group (Working Group or Group) met for seven week-long meetings prior to submitting the Working Group's proposal to the Committee.

Considering the temporary nature of the two interim final rules and the thorough review of the regulation provided for in this rulemaking process, the two previously issued interim final rules shall be made final when the following proposed rule is published as a final rule. Of course, the amendments proposed here would govern any conflicts with the previously published interim final rules when published as a final rule.

On May 14, the Committee recommended that the FRA Administrator publish the Working Group's consensually reached effort as a proposed rule. Simultaneously, the Committee recognized that the proposal contains some suggested amendments that may be further improved by being subject to more debate. In order to address these concerns and in keeping with the established RSAC process, "[f]ollowing issuance of a proposed rule, FRA requests the RSAC to assist FRA in considering comments received; [w]ith respect to either a proposed or final rule, FRA may schedule one or more meetings of the RSAC during which information and views are received from other interested parties." FRA's "The RSAC Process" (Mar. 27, 1996). In conformity with RSAC's practice, FRA would expect that this task of resolving any remaining details would be performed by the Working Group on behalf of the RSAC regardless of whether these details are raised by RSAC members themselves or in comments from "other interested parties."

IV. The Qualification and Certification of Locomotive Engineers Working Group

The Working Group is comprised of representatives from the following organizations:

American Public Transit Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Burlington Northern Santa Fe (BNSF)
Canadian Pacific Rail System (CP)
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc. (CSX)
FRA
Florida East Coast Railway Company
Gateway Western Railway
Herzog Transit Service
Illinois Central Railroad
International Brotherhood of Electrical Workers (IBEW)
Long Island Rail Road (LIRR)
Metro-North Commuter Railroad Company
National Railroad Passenger Corporation (Amtrak)
Norfolk Southern Corporation (NS)
Plasser American Corporation
Railway Progress Institute (RPI)
Transportation Communications International Union (TCU)
Union Pacific Railroad (UP)
United Transportation Union (UTU).

In addition to these Working Group members, the National Transportation Safety Board was represented at some of the meetings.

In its Task Statement (Task No. 96–6) to the Working Group, RSAC charged the Group to report back on the following issues: "All matters related to the revision of the regulations, including data required for regulatory analysis, with the exception of Control of Alcohol and Drug Use issues (See issues paper for October 31-November 1, 1996 meeting in the docket)." FRA intends to address the alcohol and drug related issues in a future proposed rule.

The Working Group's goal was to produce a preamble and proposed rule text recommending revisions to 49 CFR part 240, that are warranted by appropriate data and analysis. The Working Group's recommendations would then be sent to RSAC for review. FRA would in turn utilize the consensus recommendations of RSAC as the basis for proposed and final agency action whenever possible, consistent with applicable law and Presidential guidance. The Working Group could also recommend specific safety policies and procedures that the Working Group considered relevant but inappropriate for regulatory action.

To accomplish this goal, the Working Group held seven meetings, all of which were open to the public. Summary minutes were taken, and have been placed in a docket available for inspection in Washington, D.C. FRA worked in concert with the Working Group to develop this NPRM.

At a meeting held on May 14, 1998, RSAC voted to recommend that the Administrator issue this document as a proposed Federal regulation and continue the rulemaking procedures necessary to adopt its principles in a final rule. At the conclusion of the comment period on this proposal, FRA will work with the Working Group in developing a final rule.

The section-by-section analysis discusses all of the proposed amendments to this part.

V. Major Issues

Background

In order to facilitate any discussions concerning this rule, FRA presented RSAC and the Working Group with a thirty-four page "Issues Paper." This document was the agency's attempt to provide background information, unanswered questions, and the pros and cons of possible "options for consideration" for all of the issues FRA had identified as areas for reconsideration. The tone of the "Issues Paper" was objective and contemplated both dramatic and subtle changes to the regulation.

By the end of the Working Group's first meeting, the Group had created its own list of topics to be discussed at future meetings. At that first meeting, twenty-three issues were identified and set out in an agenda. By the end of the sixth meeting, the Working Group had added five (5) more topics to the agenda. This agenda was challenging, even more so since many of these topics contained multiple sub-issues. The following is a list of the final twenty-eight topics:

1. Modification of the Decertification Provisions to Clarify Railroad Discretion.
2. Modification of the Provisions of § 240.117 to Refine the Operational Misconduct Events that can cause Decertification, including Decertification Rights for Defective Equipment.
3. Permit Alternate Responses to Operational Misconduct Events.
4. Should Operational Tests Result in Decertification.
5. Ways to Improve FRA's Direct Control Over Operational Misconduct.
6. Servicing Track Operations.
7. Should Operational Experience be a Prerequisite for Designated Supervisors of Locomotive Engineers.
8. Use of Contractors as Designated Supervisors of Locomotive Engineers.
9. Accommodating New Railroads—New Territories.
10. Conductor Pilots versus Engineer Pilots.
11. Class 1 Railroads' Acceptance of Class 3 Railroads' Certification.

12. Electronic Data Storage.
13. Improving the Dispute Resolution Procedures.
14. A Person's Right to Exercise Seniority in Another Craft.
15. Reimbursement for Monetary Losses Due to a Railroad's Improper Action Under Part 240, Dispute Resolution Procedures.
16. Requested Ban for Consecutively Running of Part 240 Decertification and Disciplinary Punishments Periods.
17. Data Required to be on Certificates.
18. Reviewing the Hearing and Visual Acuity Standards.
19. Class of Service.
20. Enforcement of Regulations.
21. Review Timing Constraints as Well as Requirement for State and NDR Checks Contained Within Regulation 49 CFR 240.111, 240.217 and 240.113.
22. Supplemental Certification of Tenant Railroad Engineers (49 CFR 240.225 and 240.229).
23. Application of the Rule to Certain Service Vehicles.
24. Modify or Eliminate NDR Checks.
25. § 240.107 Proposal to Modify the Definition of Locomotive Servicing Engineer to Permit Them to Move Sand Cars, Air Repeater Cars, Locomotive Diesel Fuel Cars, etc.
26. Proposal to Lengthen the Certification Period from 3 Years to 5 Years.
27. § 240.7 Proposal to Specifically Exempt Computer Controlled/Remote Controlled Hump Locomotive Operations From part 240.
28. Alleged Conflict Between § 240.221(c) and SA 96–05, Regarding the Identification of Qualified Persons.

In the absence of any proposed changes, it can be assumed that the Working Group consensus was to recommend no change concerning the specific subject. The Working Group recommended and FRA is proposing to make changes on six major topics. A discussion of each of these major topics follows.

A. Application of the Rule to Certain Service Vehicles

Since the rule's inception, there has been profound concern over whether certain service vehicles (or "specialized roadway maintenance equipment" as referred to in this proposed rule) should be considered locomotives for the purposes of this rule, and in 1993 FRA promised to issue a notice of proposed rulemaking on this issue. 58 FR 18982, 18983 (Apr. 9, 1993). The definition of a locomotive found in § 240.7 of the final rule is sufficiently broad so that the rule would require certified operators at the controls of vehicles that are deemed locomotives for the purposes of FRA's locomotive safety standards. See 49 CFR part 229. However, in response to petitions filed by the AAR and Sperry Rail Services Incorporated (Sperry), FRA deferred its decision on whether to insist that certified engineers operate four types of vehicles that fit within that previous definition of a locomotive but which are commonly considered "service vehicles."

The basis for the deferment was thoroughly explained within the preamble of the interim final rule. 58 FR 18982, 18983 (April 9, 1993). Within that preamble, FRA identified four general types of service vehicles that are different from the types of vehicles traditionally considered locomotives. There is no question that the rule requires qualified and certified locomotive engineers to operate the types of vehicles traditionally considered locomotives. The proposed amendments to the rule attempt to resolve the issue of when other vehicles that may perform the same function as a traditional locomotive are required to be operated exclusively by certified locomotive engineers.

During the Working Group's discussions, the question of FRA's legal authority was raised. FRA's position is that the legislative history of the Rail Safety Improvement Act of 1988 reflects that Congress did not intend to limit the certification rule to persons who operate traditional locomotives. Instead, the legislative history reflects that (1) the statute does not define "locomotive;" (2) Congressional committee reports and floor speeches do not explicitly define "locomotive;" and, (3) in a joint statement, managers on the part of the House and the Senate agreed that the intent of the bill was to "require the Secretary [of Transportation] . . . to issue rules, regulations, standards, and orders concerning minimum qualifications for the operators of trains." House Conference Report No. 100–637, at 21 (May 19, 1988) (emphasis added). As a result of these findings, FRA does not believe that the statute or the legislative history precludes the agency from regulating the operators of service vehicles that have operational characteristics similar to those of a train.

Given FRA's authority, one follow-up question is whether there is a need for certification of the operators of these vehicles as a general matter. To a great extent, the Working Group's opinion is influenced by the publication of the recently enacted Roadway Worker Protection rule. 61 Fed. Reg. 65959 (Dec. 16, 1996) (codified at 49 C.F.R. 214). The Working Group members recognize that the Roadway Worker Protection rule requires the training and qualification in on-track safety for operators of specialized roadway maintenance equipment. Hence, it would be duplicative, to some degree, to require that these operators of specialized roadway maintenance equipment also be certified as locomotive engineers.

Between 1989 and 1993, there were 188 injuries and five (5) fatalities as a result of workers being struck by maintenance-of-way (MOW) equipment. A review of accidents in which roadway workers were struck indicates that roadway workers have been struck by MOW equipment during the performance of track and structures construction and maintenance performed jointly by ground employees and heavy on-track machinery. FRA expects that implementation of the Roadway Worker Protection rule will prevent at least half of such potential casualties. The probability of occurrence associated with the remaining casualties would not likely be affected by requiring exclusive operation by certified locomotive engineers. Based upon the history of roadway worker casualties, virtually all of these accidents occur at low speeds where train handling is not an issue.

After considering training, the Working Group concentrated on categorizing the vehicles into two classes of service: (1) specialized roadway maintenance equipment, and (2) dual purpose vehicles. The Working Group could not document an accident history or any other reason to require certified operators of specialized roadway maintenance equipment when these vehicles are used "in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site." § 240.104(a). The sole purpose of this type of vehicle is to perform its intended MOW function.

On the other hand, dual purpose vehicles, by definition, can be used to perform an MOW function and haul cars. Thus, the need to have certified operators of these dual purpose vehicles is genuine where the vehicle is operating more like a locomotive than a service vehicle. The need is not a universal one and the Working Group did not see a need for a dual purpose vehicle to be operated by a certified locomotive engineer when the following conditions are met: (1) The vehicle is operated in conjunction with roadway maintenance and related MOW functions; (2) the vehicle's movement is being conducted "under the authority of rules designated by the railroad for

maintenance of way equipment [and] under the direct supervision of an employee trained and qualified in accordance with § 214.353 of this chapter, which provides Exclusive Track Occupancy for the roadway equipment with respect to trains;" (3) the person operating the vehicle has received adequate training pursuant to safety laws regulating roadway workers; and (4) the vehicle has met a minimum standard for operative air brakes.

None of the Working Group members submitted statistics showing that when dual purpose vehicles are being used for maintenance purposes they are causing accidents or incidents that could be prevented by requiring that such vehicles be operated by certified locomotive engineers. Meanwhile, the Working Group did identify one potential problem. One of the proposed conditions for a non-certified locomotive engineer to operate a dual purpose vehicle that will be hauling cars involves a requirement that "not less than 85% of the total cars designed for air brakes shall have operative air brakes." § 240.104(b)(4). The Working Group's intent is to make sure that when a dual purpose vehicle is hauling cars, to or from a work site, under the direction of qualified supervision, and operated by a trained roadway worker, the air brakes on the consist can stop the train within the normal stopping distance for that equipment. This requirement addresses safety concerns raised by a fatal accident involving a burro crane hauling cars from a work site on November 5, 1996 which did not have brake pipe hoses connected between the locomotive crane and the three freight cars being hauled.

FRA wants to be clear that whenever a dual purpose vehicle is hauling cars in a train movement, regardless of whether the train is traveling to or from a work site, it must comply with the safety regulations found in part 232 of this chapter. These proposed revisions to part 240 are not intended to change this requirement, rather the proposed rule is merely aimed at determining when a person who is not a certified locomotive engineer is able to operate a train under certain limited conditions. That is, it is within a railroad's discretion as to whether a locomotive engineer or other person, pursuant to § 240.104(b)(4), should operate a dual purpose vehicle hauling cars; however, regardless of whether the operator is a certified locomotive engineer or not, a railroad is required to operate, inspect and equip all trains in accordance with the requirements regarding power brakes contained in part 232 of this chapter. Thus, while this proposed part 240 exception provides railroads with the discretion to use other than certified locomotive engineers under certain limited circumstances, the railroads would not be granted an exception from complying with part 232 of this chapter.

We would appreciate comments to learn how others perceive the "85% rule" found in § 240.104(b)(4). FRA wishes to hear whether commenters believe this rule is necessary. We are also interested to know whether it is under- or over-inclusive. One alternative may be to change this paragraph to read "any person who operates a dual purpose vehicle which is: (iv) hauling cars and which dual purpose vehicle has been operated, inspected and equipped in accordance with the requirements regarding power brakes contained in part 232 of this chapter."

One of the components of the Working Group's consensus involves how to address the treatment of emerging technologies within the regulatory arena. That is, manufacturers of service vehicles indicate that the industry is requesting equipment that can perform a specific MOW task and haul an increasing number of cars. As these vehicles improve, some railroads may decide to take advantage of the vehicles' ability to haul cars—even to the exclusion of their MOW function. Without a regulatory mechanism to address these dual purpose vehicles, FRA is concerned that some railroads might seek to use the dual purpose vehicle as a functioning locomotive to avoid the expense of having a certified locomotive engineer at the controls. Some Working Group members, including FRA, believe that such a use would circumvent the legislative intent behind the statute requiring the rule and add an unacceptable safety risk.

B. Qualifications for Designated Supervisors of Locomotive Engineers

The role of the Designated Supervisor of Locomotive Engineers (DSLE) is critical to the safety success of this rule. This role is twofold. One, the DSLE makes the final determination that a locomotive engineer is qualified to safely operate a train. Two, after a person is certified, a DSLE is responsible for qualifying engineers on the physical characteristics of any additional territories the engineer will need to operate over.

Some members of the Working Group, including FRA, are concerned with whether the current qualifications for DSLEs are too lenient. For instance, the rule does not make operational experience a prerequisite. FRA has noted that some railroads have been seeking to establish systems in their implementation programs that do not assure that supervisors will be experienced individuals. Moreover, since implementation of the original rule, FRA has investigated several instances in which there is some evidence that railroads designated persons to be supervisors who have only a minimum amount of operational experience. Although FRA is able to obtain corrective action in those instances where there is evidence that less than fully qualified persons are being selected, the case-by-case approach to this issue is not the most effective way to resolve the matter.

From this starting position, the Working Group considered whether § 240.105 should be amended to specify a minimum length of time that a person must serve as a locomotive engineer before that person would meet the criteria for becoming a designated supervisor of locomotive engineers. For example, one possible solution is to amend § 240.105 so that it includes a requirement that all designated supervisors of locomotive engineers have a minimum of three (3) years of experience operating locomotives. In conjunction with this proposal, the Working Group's review considered whether a minimum number of hours actually operating a train each year should be articulated. One advantage of such an experience requirement might be that DSLE candidates would benefit from real world experience. In fact, some labor and management Working Group members supported a minimum amount of experience requirement since they believe that this type of experience is critical to the development of an engineer's knowledge and skill.

Conversely, other Working Group members point out that the rule should give railroads greater discretion since there is no clear safety rationale based on accident statistics for an experience requirement. These Working Group members state that the current rule assures that persons selected to be DSLEs will be competent since it requires that candidates for supervisor must be certified engineers. It also requires that candidates demonstrate that they have the knowledge, skill, and ability to be effective supervisors of engineers; these criteria include the capacity to effectively test, evaluate, and prescribe appropriate remedial action for noted deficiencies. In the end, the Working Group did not reach a consensus on whether FRA should propose an experience requirement.

As the proposed modifications to § 240.105(b)(4) reflect, the Working Group's discussion disclosed that an

underlying concern was the varying degree to which supervisors are familiar with the physical characteristics of the territories in which they work. Given this universal concern, the Working Group readily agreed to a compromise proposal which would require those persons who are DSLEs to be qualified on the physical characteristics of the portion of the railroad on which they are supervising. As specifically addressed in the proposed rule, railroads are required to address how they intend to implement the qualification of their DSLEs on physical characteristics and include those procedures in their certification programs.

This compromise addresses similar safety concerns to those raised by the lack of operational experience. That is, allegations are raised that some DSLEs could not properly supervise, train, or test the locomotive engineers they supervise without having an engineer's level of education regarding the territory over which they are performing these supervisory duties. This might be especially true when a supervisor is transferred from a relatively flat/level territory to one which contains steep grades. [Steep grade territory would require a greater degree of train handling ability.] The proposed rule would satisfy the concern that, at a minimum, a DSLE who changes territories to a territory presenting tougher train handling challenges would receive an engineer's level of training on the physical characteristics of the new territory. Furthermore, FRA notes that § 240.127(b) already requires that certified locomotive engineers must have "the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform." Since it is presumed that a DSLE in a territory would be permitted to perform train handling service in that territory, as well as be prepared to offer remedial advice for noted deficiencies in the skill level of other locomotive engineers, a DSLE would need training that is commensurate with the difficulty of that territory.

The Working Group's discussions recognized that the proposed requirement for DSLEs to be qualified on the physical characteristics of territory over which they supervise may conflict with other findings made by the Group. Consequently, the Working Group discussed these conflicts and agreed to a solution. A detailed discussion of this concern and the proposed solution is found in the section-by-section analysis relating to § 240.127(c)(2).

C. Improving the Dispute Resolution Procedures

FRA had addressed many procedural issues concerning the initial regulation by issuing a second Interim Final Rule. 60 FR 53133 (Oct. 12, 1995). That Interim Final Rule provided improved procedures for the conduct of hearings held in connection with certification of the locomotive engineers pursuant to 49 CFR part 240. It clarified the standards for initial revocation hearings and provides more detailed procedural rules for the review of such decisions within FRA. The intention of this interim measure was to increase the effectiveness and clarity of the provisions involving hearings conducted in connection with the locomotive engineer certification program. From FRA's view, the 1995 interim changes have been successful in achieving their intended goals.

Although FRA has already implemented this Interim Final Rule to improve the clarity of the existing procedures, the agency recognizes that there may be additional procedures that could be clarified or changed that would improve the dispute resolution process located in Subpart E. FRA received two (2) comments in response to this Interim Final Rule, and both comments were distributed to the Working Group for its consideration. One commenter, the AAR, is a member of the Working Group. In summary, the AAR had two concerns. One, AAR stated that by modifying the penalty schedule in Appendix A, FRA has made railroads liable for civil penalties for engineer conduct; "this would significantly affect and alter the rights of the railroads." FRA disagrees that the changes made to the penalty schedule make railroads liable for engineer conduct; instead, FRA's position is that the penalty schedule needed to accurately reflect the existing rule so that it would be clear that railroads would be held responsible for their own conduct when requiring an engineer to exceed certificate limitations. § 240.305(c). Two, the AAR also stated that "FRA is incorrect in concluding that permitting notice and comment * * *. is 'contrary to the public interest.' " In hindsight, FRA stands by its reasoning on the denial of notice and comment for the same reasons that were originally provided. That is,

> A number of these changes are critical to the effective implementation of these rules and the delay that notice and comment would cause would be contrary to the public interest in railroad safety. The beginning of a new fiscal year on October 1, 1995, provides some urgency because budgetary constraints will require the use of internal hearing officers on all but emergency matters at the conclusion of Fiscal Year 1995. Moreover, the orderly implementation of part 240 requires prompt revision of its hearing procedures.

60 FR 53133, 53135–36 (Oct. 12, 1995).

The other commenter was a concerned citizen who identifies himself as a consultant to the BLE and as someone who "has participated in the handling of over two dozen Petitions for Review to FRA's Locomotive Engineer Review Board * * * [and] has served as a consultant or a representative in four administrative hearing cases." This commenter was concerned that by eliminating any reference suggesting that an appellate review of the Locomotive Engineer Review Board's (LERB) decision or a railroad's hearing was intended to occur at the administrative proceeding stage, "the amended rule [would] * * * provide a disincentive for railroads to accord a locomotive engineer, facing potential revocation, due process." Furthermore, this citizen was concerned that "the amended rule would essentially render the LERB impotent as an arbiter in certification disputes."

In response to these comments and the agency's attempt to revisit the whole issue, FRA raised seven (7) options for consideration in the "Issues Paper" presented to the Committee and the Working Group. In addressing this issue, the Working Group formed a Task Force consisting of a some interested Group members to explore different options. After exploring the alternatives, the Working Group accepted the Task Force recommendations that the current system is the best choice, assuming that the petitions to the LERB and the requests for administrative proceedings are handled promptly.

D. Revisiting the Standards for Hearing and Vision

Since FRA has not modified the standards for hearing and visual acuity since publishing the final rule in 1991, FRA suggests that sufficient time has passed to evaluate the effectiveness of this rule and determine whether any modifications are necessary. For instance, several commenters to the 1989 proposed rule raised concerns that were addressed in the preamble to the final rule. 56 FR 28228, 28235–36 (June 19, 1991). Based on these comments, FRA made changes to the standards to allow railroads to use some discretion to permit individualized assessments of acuity and allow greater freedom in

selecting ways to accomplish FRA's goals. Meanwhile, FRA rejected comments that suggested different acuity standards would be better or that no action on this subject was necessary because of existing railroad practices.

When FRA suggested that the Committee and the Working Group review these standards, the agency was aware of only a handful of people dissatisfied with the rule. This dissatisfaction received the following mention in FRA's "Issues Paper" presented to the RSAC:

> Meanwhile, FRA is aware of at least two or three persons who were dissatisfied with the way in which the rule was enforced to their detriment. In addition, FRA is aware of at least one instance in which an engineer was denied certification by one railroad due to the inability to recognize and distinguish between the colors of signals and yet was certified by another railroad.

Subsequent to the submission of this issue to the Working Group, the National Transportation Safety Board (NTSB) issued a report determining that a fatal train accident was caused by a train engineer's inability to perceive a red block signal. The following is a portion of the executive summary taken from the NTSB's Railroad Accident Report—Near Head-On Collision and Derailment of Two New Jersey Transit Commuter Trains near Secaucus, New Jersey, February 9, 1996 (NTSB/RAR–97/01):

> On February 9, 1996, about 8:40 a.m., eastbound New Jersey Transit (NJT) commuter train 1254 collided nearly head-on with westbound NJT commuter train 1107 near Secaucus, New Jersey. About 400 passengers were on the two trains. The engineers on both trains and one passenger riding on train 1254 were killed in the collision.
>
> The National Transportation Safety Board determines that the probable cause of NJT train 1254 proceeding through a stop indication and striking another NJT commuter train was the failure of the train 1254 engineer to perceive correctly a red signal aspect because of his diabetic eye disease and resulting color vision deficiency, which he failed to report to New Jersey Transit during annual medical examinations. Contributing to the accident was the contract physician's use of an eye examination not intended to measure color discrimination.

As a result of its investigation, the NTSB made two (2) recommendations to FRA. The first recommendation is numbered R–97–1 and recommends that FRA:

> [r]evise the current color vision testing requirements for locomotive engineers to specify, based on expert guidance, the test to be used, testing procedures, scoring criteria, and qualification standards.

The second recommendation is numbered R–97–2 and recommends that FRA:

> [r]equire as a condition of certification that no person may act as an engineer with a known medical deficiency, or increase of a known medical deficiency, that would make that person unable to meet medical certification requirements.

An NTSB representative met with the Working Group and presented these recommendations and the NTSB's report upon which the recommendations are based.

Upon receipt of the NTSB's recommendations, a task force consisting of Working Group members representing a cross-section of the Group was formed to address the NTSB's recommendations. The task force's efforts were initially impeded because none of the task force members had the medical expertise necessary to make an informed decision. In order to address NTSB recommendation R–97–1 effectively, the task force relied heavily on the resources of one Working Group member, the AAR. The task force scheduled a meeting after securing medical opinions from those currently administering the regulation and arranging for other medical experts to attend that meeting. That task force meeting proved to be productive, especially due to the participation of medical officers from the major railroads, the Federal Aviation Administration (FAA), and the NTSB. Although these medical officers could not vote on the proposals, their counsel was greatly appreciated and carried great weight. The information obtained during these contacts was used to formulate changes both to § 240.121 and formed the basis for the proposed addition of Appendix F. The details of the task force recommendations, which FRA adopted, can be found in the proposed amendments to paragraphs (b), (c)(3), and (e) and which address NTSB recommendation R–97–1.

In working through possible responses to the concern identified by NTSB recommendation R–97–2, the Working Group considered two possible alternative amendments that could work together with the change being proposed in this notice; however, in the end, the Working Group decided not to include these alternative amendments as part of the proposed rule. One of the failed amendments was a self estoppel or disbarment requirement that would obligate the engineer to avoid service as an engineer if that person knew or had reason to know of any medical condition that would make that person unable to operate a locomotive in a safe manner. Similarly, a self reporting scheme was considered. The reporting obligation would have been triggered whenever the engineer develops a medical condition that could reasonably be expected to adversely affect his or her ability to comply with this part or detects a significant change in the severity of such a known medical condition. The engineer would have been required to report the new medical condition or the change in a known medical condition to the employing railroad's medical examiner along with a duty to take appropriate tests (such as those set forth in Appendix F) as the medical examiner may have required.

After serious consideration, the Working Group considered these proposed alternatives to be flawed and generally were too vague to be fairly enforced. They do not give the individual engineer adequate notice of the types of medical condition that would require reporting and declining to operate a train. Reasonable people can and do differ concerning whether a given condition of a given severity would make it unsafe to operate a train. Since FRA has not been able to either (1) demonstrate that accidents or fatalities are occurring because engineers with particular serious medical conditions are operating trains, or (2) define with any particularity the medical conditions about which we are concerned, it would be unreasonable to require locomotive engineers to make subjective medical judgments that may disqualify them from earning a living.

Despite running into the above explained roadblock, the Working Group agreed that the factual basis for NTSB's recommendations contained reasons for concern. The Group then set out on a different tack. The premise of this new approach was to find an objective way to measure a deteriorating medical condition serious enough to require a locomotive engineer take affirmative action and notify the railroad. The duty to notify the railroad was narrowed to include only medical conditions affecting vision and hearing since those were the only medical criteria for certification. The Working Group's consensus on this issue is found in proposed § 240.121(f). As noted above, additional background information on the specifics of these proposals can be found in the section-by section analysis.

No parallel concerns have been raised concerning hearing acuity and its testing procedures. However, the Working Group considered whether changes were necessary to update the hearing requirements. Based on the advice of the medical experts attending the task force

meeting, it was determined that no recommendations for change were necessary.

FRA notes that it has taken the interim action of publishing a Safety Advisory that is based on RSAC recommendations made on May 14. See 63 FR 29297 (May 28, 1998). Safety Advisory 98–1 addresses the vision standards of certified locomotive engineers in order to reduce the risk of accidents arising from engineers having impaired vision. We firmly believe that the RSAC recommendations reflect the current best thinking of the regulated community and that broad sharing of such information can be of assistance to medical examiners who are responsible for administering the existing regulation.

E. Reviewing the Requirements for Consideration of Unsafe Conduct as a Motor Vehicle Operator

Some Working Group members raised the issue of whether the proposed rule should modify or eliminate the consideration of unsafe conduct as a motor vehicle operator, as would be found in the National Driver Register (NDR) and individual state motor vehicle department records. Those requirements originate from the statute requiring the licensing or certification of locomotive operators. See Statutory Background section, supra. FRA went to great lengths to explain the procedures for obtaining and evaluating motor vehicle driving record data in Appendices C and D to Part 240.

Some Working Group members wanted to eliminate motor vehicle data requests from the rule. The reasons for doing so are diverse. One issue is whether the motor vehicle data are useful as a predictor of railroad employment conduct. The experience of some Working Group members is that the data are useful in such a small percentage of cases that the costs far exceed the benefits. In addition, some Working Group members believe the process is an unnecessary invasion of a person's privacy. Meanwhile, the process of requesting the data can be frustratingly time consuming and unreliable.

Although FRA is empathic to the concerns raised by some Working Group members, the agency believes that eliminating the regulatory provisions concerning the review of motor vehicle data would be contrary to the plain meaning and intent of the statute. After further review, the Working Group members agree that elimination of this data review is not possible given the statutory requirements. Further, the Working Group members recognized that the need to identify potential substanco abuse disorders was a primary motivator for the creation of these regulations. Based on these determinations, some Working Group members declared their intent to work towards requesting a statutory change.

Since the Working Group resigned itself to the fact that elimination of the review of motor vehicle driving data was outside the Group's authority, the Group focused on identifying problems with the current system and whether the regulation could be modified to resolve any of those problems. Some Group members noted that it is difficult to comply with the procedures for requesting motor vehicle checks. In particular, they mentioned that these checks require: (1) A notarized signed release from the person; (2) handling by mail only; and (3) a separate request to the State in which the person has a valid motor vehicle license. In some Working Group members' experiences, responses from the States and the NDR could take anywhere from two (2) weeks to several months. Occasionally, responses have been lost or claimed not to have been received. These are serious concerns because any delay in receiving information on potential substance abuse problems could effect safety.

Some Working Group members expressed unhappiness regarding the type and accuracy of the data received from the States and the NDR. It was noted that data received from the NDR on an individual person only advises of a probable match for that engineer in a particular State which may have information on traffic violations. The data do not contain specific information on what type of traffic violation(s) are contained on the state record. The person or the railroad must make a separate request to that State to receive specific information on any violations. Mismatches often occur or after requesting additional State records the information indicates other than alcohol or drug related offenses.

The railroad Working Group members set goals of achieving (1) "one stop shopping" for both NDR and State motor vehicle data, (2) simplified request procedures, and (3) accurate data. The other Working Group members agree that these are reasonable requests but that this Group does not have the authority to resolve them. In order to achieve these goals, individual companies, unions and associations plan to contact the National Highway Traffic Safety Administration to discuss what possible improvements can be accomplished and FRA has offered its assistance on these matters.

In an attempt to ease the administrative burden posed by complying with FRA's current regulations concerning motor vehicle data, the Working Group suggested some amendments which FRA is proposing in this notice. In §§ 240.111(a) and (h), the proposal would provide 366 days, as opposed to the current 180 days, for the individual to furnish data on prior safety conduct as a motor vehicle operator. This greater time period should allow for lost or missing requests to be found or resent. It will also provide greater leeway in straightening out potential misinformation.

Further, a new § 240.111(i) is proposed to make sure that railroads receive timely information regarding offenses involving prohibitions on the operation of a motor vehicle while under the influence or impaired by alcohol or a controlled substance. This proposal addresses the concern that by increasing the periods in which individuals have a duty to furnish this information will not affect the timeliness of the information received. The specifics of how this proposal would work can be found in the section-by-section analysis.

F. Addressing Safety Assurance and Compliance

One of the principles of the current rule is that locomotive engineers should comply with certain basic railroad rules and practices for the safe operation of trains or risk having their certification revoked. The rule provides for persons who hold certificates to be held accountable for their improper conduct. The reason for holding people accountable for operational misconduct serves one of the principal objectives of this regulation; that is, by revoking the certificates of locomotive engineers who fail to abide by safe rules and practices, the implementation of the rule is instrumental in reducing the potential for future train accidents.

FRA recommended that the Working Group consider the following five general issues: (1) the degree of discretion accorded railroads in responding to individual incidents; (2) the criteria for the types of operational misconduct events that can trigger revocation of a certificate; (3) the severity of the consequences for engaging in operational misconduct; (4) the value of decertification for violations that occur during operational tests required pursuant to § 240.303; and (5) the effectiveness of FRA's direct control over operational misconduct.

1. Clarifying Railroad Discretion. Prior to the effective date of the 1991 final

rule, railroads regularly applied varying amounts of discretion concerning technical instances of noncompliance, i.e., conduct that does not comply exactly with an operating rule but is unlikely to cause any type of accident. The application of this discretion was often the result of informal procedures with labor organizations representing locomotive engineers. Since the effective date of this regulation, FRA has received numerous inquiries as to whether or not such discretion is permitted by the regulation for technical instances of noncompliance with the decertifiable events specified in § 240.117(e).

Section 240.307(b)(1) provides that it is mandatory for a railroad to suspend a person's certificate when the railroad is in receipt of reliable information indicating that the person is no longer qualified. FRA's purpose in promulgating the rule with this mandatory language was to eliminate railroad discretion, thereby creating uniform enforcement throughout the industry. By eliminating railroad discretion for non-compliance of certain serious operating rules, FRA was trying to avoid uneven enforcement due to favoritism, whether it be from railroad supervisors or labor organizations. In addition, the elimination of discretion prevents railroads and labor organizations from loosely complying with safety laws in return for some economic benefit. Thus, FRA's goal was for all locomotive engineers to be subject to the same decertification events regardless of which railroad employed them.

In addition, FRA's intent was that the decertifiable events specified in § 240.117(e) articulate serious instances of non-compliance, i.e., misconduct of the type that has caused or is likely to cause accidents. If technical instances of non-compliance are occurring which fit the definitions of the decertifiable events specified in § 240.117(e) then the problem may be that these events are defined too broadly. If that is so, the solution may be to further refine these decertifiable events rather than give railroads some kind of limited enforcement discretion.

FRA hypothesizes that if there is perceived uneven enforcement among the railroads due to uneven use of discretion, it may be due to the fact that some railroads have not thoroughly considered the regulatory language in § 240.307. For example, some railroads may consider revocation due to the occurrence of an operational misconduct event, but decide against holding a § 240.307 hearing because the engineer's actions are deemed defensible. The railroad might want to note the incident and the railroad's reasons for not taking further enforcement action in the engineer's file so as to provide a record in defense of a civil money penalty by the agency for failure to withdraw a person from service. *See* § 240.307(a). Other railroads may consistently hold revocation hearings and believe that they must revoke the engineer's certificate if there is a violation of § 240.117(e) regardless of the mitigating factors or defenses. Hence, a question arises as to whether there is suitable railroad discretion already built into the rule which is either under or over-utilized by different railroads.

Based on their consideration of the above information in FRA's "Issues Paper," the Working Group discussed the pros and cons of each option. In doing so, they reached several conclusions about this subject. One conclusion is that uniform enforcement of the rule is an important goal; hence, unbridled railroad discretion would not be in accord with the intent of the rule. A second conclusion is that, under limited and specified circumstances, railroads must consider certain mitigating factors as complete defenses to an alleged violation. The Working Group decided that one of FRA's interpretations should be made an explicit part of the rule since it was clear that some railroads did not understand FRA's position on the subject. That is, certification should not be revoked if an intervening cause prevents or materially impairs a person's ability to comply with the regulation. § 240.307(i)(1). A third conclusion that the Working Group recommends is that those violations of §§ 240.117(e)(1) through (e)(5) that are of a minimal nature and had no direct effect on rail safety should not give cause to revoke a person's certificate. The defenses raised in the second and third conclusions are discussed in further detail within the section-by-section analysis.

In order to ensure the proper application of railroad decisions to forgo revocation based on a defense, the proposal would require a railroad to maintain a record of such decisions. § 240.307(j). FRA could use such records for safety assurance and compliance purposes. The main purposes for reviewing such records are to ensure (1) that decisions are made based on the intent of the rule and (2) that the rule is fairly applied. The fairness requirement involves FRA checking that railroads uniformly apply the rule so that persons similarly situated are similarly treated.

In order to achieve consensus, the Working Group needed to address how to allay the railroad representatives' fears that FRA could impose civil penalties, or take other enforcement action, if FRA judges a railroad to have misapplied these proposed defenses. Some Working Group members representing railroads stated that these proposed concepts are complex and would be applied mainly by non-lawyers. Meanwhile, FRA expressed the need for some enforcement control, otherwise the rule might be so ambiguous as to lead to the unwanted unbridled discretion. The Working Group struck a balance by suggesting that FRA should not take enforcement action for situations in which the railroad makes a good faith determination after a reasonable inquiry. FRA proposes to incorporate that approach in § 240.307(k).

2. *Fine tuning the types of operational misconduct events that can trigger revocation.* FRA has already modified the operational misconduct events listed in § 240.117(e) once since the final rule was promulgated. That modification is contained in the first interim final rule published on April 9, 1993. FRA's changes were necessary to prevent persons from having their certification revoked for certain types of incidents considered too minor to warrant decertification.

Despite these modifications, FRA is aware that some members of the industry are unhappy with the types of events that trigger revocation. In most instances, the complaints are the result of beliefs that the § 240.117(e) cardinal safety rules are either ambiguous or too broad. The Working Group's review of these cardinal safety rules suggests that changes are necessary.

In summary, the Working Group consensus largely advocates adopting previously published interpretations made by FRA in a safety advisory distributed to leaders in the industry known as FRA Safety Advisory—96–02. The Group's consensus is reflected in the proposed modifications to § 240.117(e)(1), (2), (4) and (5).

The one proposed change that is not derived from a previously articulated FRA interpretation involves a modification to the cardinal rule delineating speeding violations. The changes to § 240.117(e)(2) propose the elimination of the phrase "or by more than one half of the authorized speed, whichever is less," and would add a sentence to include violations of restricted speed under certain conditions. Hence, the result is that revocation would no longer be warranted for low speed violations that

occur when a person is not required to operate at restricted speed. For example, a person would no longer risk certificate revocation if the train the person is operating is traveling at 16 to 19 miles per hour (mph) when the maximum authorized speed is 10 mph, and the person is not required to be able to stop the train within one-half the person's range of vision.

The Working Group's decision in making the proposal to eliminate low speed violations from the list of operational misconduct events is based on their own experiences applying the rule. For instance, the Group discussed the difficulties in precision handling at low speeds, especially if the locomotive or train encounters any measurable grade. Another basis for proposing the elimination of this type of speeding violation concerns the admitted inaccuracies of the speed indicators. This issue is also one of fairness to the individual. That is, it does not seem fair to hold a person accountable for operating at 16 mph, when the maximum authorized speed is ten (10) mph, and the regulations only require speed indicators operating at speeds between 10 to 30 mph to be accurate within plus or minus 3 mph. (See § 229.117). Also, a locomotive used as a controlling locomotive at speeds below 20 mph is not required to be equipped with a speed indicator.

In addition, the data do not support a need to continue revoking certificates for low speed violations that occur where restricted speed is not an issue. Between 1991 and 1996, 29 accidents, resulting in three (3) injuries, occurred due to excessive speed between 16 and 19 mph. Sixteen of these accidents involved a violation of restricted speed and would remain decertifiable events under the proposal. Thirteen of these accidents were due to excessive speed, but would no longer be decertifiable events under the proposal. It is important to note that none of the latter group of accidents resulted in any injuries. Many of these accidents were due to harmonic rock which usually occurs between 15 and 20 mph. In general, accidents which occur at such low speeds do not result in casualties. Railroads would retain their right to take disciplinary action in such situations pursuant to § 240.5(d). Furthermore, it would be unfair to apply to these engineers the harsh Federal penalty that is designed for a more serious offense, such as exceeding the maximum authorized speed by more than 10 mph.

3. Adjusting the severity of the consequences for engaging in operational misconduct. Individuals who engage in operational misconduct of the type proscribed in this rule are acting in ways that routinely cause a significant number of train accidents. Denying certificates to those who engage in such conduct both reduces the risk that such individuals will repeatedly engage in such operational misconduct and serves to inspire others to carefully adhere to these critical safety rules. Both factors are intended to help prevent possible future accidents attributable in whole or in part to lack of routine vigilance concerning adherence to critical safety rules by locomotive engineers.

Although FRA's position is that the current system of revocation for operational misconduct is effective, FRA wants to consider whether other methods would be equally or more effective. The consequences for operational misconduct are found in §§ 240.117(g) and (h). Some labor Working Group members requested that the Group explore how additional training of some sort, in addition to or as a substitute for a revocation period, may be considered a suitable alternative. FRA expressed the concern that non-punitive alternatives could result in some engineers taking a more cavalier attitude towards compliance with the regulation. One Working Group member commented that the status quo should be maintained since most locomotive engineers now know and accept the consequences of violations.

Initially, some Working Group members proposed that for a single incident of operational misconduct, a person should receive training only, i.e., no revocation period would be imposed. Some railroad Working Group members objected to this proposal for two basic reasons. One, mandating training would impose a financial burden on a railroad. Second, in at least some situations, additional training would be unnecessary. For example, if a person was recently trained or willfully violated a rule, it might be fruitless to train them again. Furthermore, training alone for a willful offender would not serve to deter future conduct.

The Working Group did not deeply explore radical changes to the current rule. The discussions indicated that the current consequences flowing from operational misconduct were reasonable, but could be improved with some adjustment. FRA raised whether the whole system should be overhauled, e.g., with the implementation of a point system as most states use to implement their individual motor vehicle driver's licensing programs. However, the Working Group consensus is that such drastic changes could be difficult to implement and are not necessary to achieve the intent of the rule. Although the details of how the Working Group's proposal would be implemented are explained in the section-by-section analysis, some general comments concerning how the Group reached consensus may be helpful for those who did not participate in this process.

For instance, the Working Group's proposal includes amending § 240.117(h) so that a person who has completed such evaluation and training could benefit by having the period of revocation reduced by as much as half, as long as the period of revocation initially imposed is one year or less. Although the current rule provides for the same type of railroad discretion for a period of one year, FRA raised to the Working Group the issue of whether it is fair to leave this unfettered discretion with a railroad. That is, the issue raised was whether a person should have the right to request the conditions which would permit the reduction in a period of revocation. The basis for raising this issue was FRA's belief that it is arguable that without such a right, railroads would have the discretion to offer one person a reduction in a revocation period but deny a person similarly situated the same benefit.

After considering this question, the Working Group believes FRA still has a legitimate basis for providing railroads with the discretion to decide when to offer additional training and evaluation in exchange for a reduced revocation period. One reason to provide such discretion is that it is illogical to require railroads to provide evaluation and training when that training is not always beneficial. As discussed earlier, since training is not necessary in every case, a railroad should retain discretion on whether evaluation and training are necessary. To do otherwise would waste railroad and employee resources at their expense. In addition, by declining to reduce a revocation period, a railroad would retain the discretion to enforce a more severe penalty for willful acts or omissions.

The consensus of the Working Group is that the revocation periods were excessive and disproportionate with the nature of the offenses which trigger them. These revised revocation periods were thought by the Group to more accurately reflect the reality of daily railroad operations. They are measured, progressively more stringent, and provide an increased opportunity for mitigation by training. The basic philosophical underpinning is that they are intended to be more remedial than punitive. The goal of this regulation, consistent with the goal of FRA's entire

safety program, is not to emphasize the punishment of employees, but to promote safety by minimizing the likelihood that employees will commit acts or omissions which could have unsafe consequences. FRA will make an annual analysis of which train accidents are identifiable as being caused by the acts or omissions of locomotive engineers. If a nexus can reasonably be established between the modification of the revocation periods and the incipient indicators of an increase in such accidents, FRA will take whatever action is necessary to promote safety.

4. Revisiting whether revocation should be a consequence for violations that occur during operational tests. Under the current rule, a person who violates one of the decertifying events listed in § 240.117(e) during a properly conducted operational monitoring test pursuant to §§ 240.303 or 217.9, is subject to having their certification revoked. FRA has received inquiries as to whether the rule could be changed so that a person shall not have certification revoked for any violation detected during an operational monitoring test. The Working Group considered both the advantages and disadvantages of the current rule and found some middle ground which serves as the basis for the proposal being made in this NPRM.

First, the Working Group addressed the reasons for not counting operational misconduct that occurs during testing. For instance, one opinion was that these tests should be learning experiences for the persons tested. If a mistake is made, additional training is the answer. In that way, certified people could learn from their mistakes in a testing environment where an accident/incident is unlikely.

In response, some members stated that persons who act unsafely by violating one of the § 240.117(e) provisions will receive preferential treatment just because their non-complying activity occurred during an operational monitoring test, rather than under otherwise normal operations. Alternatively, some members believed that an operational monitoring test should be an evaluation of a locomotive engineer's skills and not a learning experience. Therefore, these Working Group members believe that violations detected under such circumstances should result in revocations.

As the discussion of this issue progressed, a related concern was articulated. Some Working Group members expressed concern that operational monitoring tests are used by some supervisors to entrap engineers in tests that are unfair. For example, proponents of this position have alleged that some supervisors have hidden a fusee under a bucket and only revealed the fusee to the engineer at a point where it was impossible for the engineer to stop the train. In other instances, the manner in which the test was conducted made it appear that the true purpose was not to monitor compliance but to make it inappropriately difficult for an engineer to pass. Hence, some labor Working Group members believe that some railroad supervisors have and will continue to use unfair testing conditions to revoke the certificates of people they do not like.

Since FRA already considers an improperly conducted operational test, such as the alleged "bucket test," to be an improper reason for decertification, FRA does not give great deference to the unfair test argument. The Working Group recognized that while FRA's interpretation is helpful, the proposal arose from alleged improper application of the rule. Hence, a modification was suggested to clarify this interpretation. FRA has adopted the consensus view that it publish FRA's interpretation as new § 240.117(f)(3).

On the larger issue, some Working Group members believed that the operational tests are conducted under real world conditions and may often represent the only method of checking whether a certified locomotive engineer makes an effort to comply with railroad operating rules. If a test is properly conducted, a violation found pursuant to a test occurs under the same conditions as other operations. Revocations for operational misconduct that occur prior to the occurrence of accidents constitute desirable prevention and fulfills the intent of the rule. Without including operational tests, revocable events would mainly be found only when an accident occurs. As a result of disagreement as to the veracity of these comments, it was not possible to reach a Working Group consensus on this issue. FRA has decided that there is a sufficient basis to continue allowing revocation consequences to apply when violations of operational testing occurs.

5. Reviewing the effectiveness of FRA's direct control over operational misconduct. The current rule prohibits certain operational conduct which is specified in § 240.305. That section makes it unlawful to (1) operate a train at excessive speed, (2) fail to halt a train at a signal requiring a stop before passing it, and (3) operate a train on main track without authority. This section enables FRA to initiate civil penalty or disqualification actions when such events occur and direct FRA remedial action is appropriate. Since changes to § 240.117(e) are proposed, some parallel modifications may be necessary under § 240.305.

In addition, administration of the existing rule has raised a safety assurance and compliance issue that may require a change to the current rule. In several incidents, FRA has encountered situations in which designated supervisors of locomotive engineers have neglected their supervisory responsibilities and permitted the engineer at the controls to violate the specified prohibitions. Two of these situations resulted in train accidents. FRA raised the issue of whether the rule needs to explicitly provide that engineers serving in supervisory roles who willfully participate in such prohibited activity are also covered by this section.

Although the Working Group agrees that a change is necessary, the Group recommended that the supervisors' conduct does not have to be willful to be prohibited. In this way, all locomotive engineers, supervisors and non-supervisors, would know that they will be held to the same standard of care. This clarification is proposed in §§ 240.117(c)(1), (c)(2), and 240.305(a)(6). While FRA maintains that the provision currently contains this authority, the proposed rule changes would put certified locomotive engineer supervisors on notice that their inappropriate supervisory acts or omissions will trigger revocation and FRA enforcement authority.

Section-by-Section Analysis

Subpart A—General

Section 240.1—Purpose and Scope

FRA proposes to make minor amendments to paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. FRA does not intend that these proposed revisions would substantively change the purpose and scope of this part.

Section 240.3—Application and Responsibility for Compliance.

FRA proposes to amend this section so that the regulatory language used by FRA in all of its rules will become more standardized. FRA does not believe that these revisions would substantively change the purpose and scope of this part.

Paragraphs (a) and (b) contain the same approach as the current rule but with some slight rewording. As under the current provision, the new provision would mean that railroads whose entire operations are conducted on track that is outside of the general system of transportation are not covered by this

part. Most tourist railroads, for example, involve no general system operations and, accordingly, would not be subject to this part. Therefore, FRA continues to intend that this rule shall not be applicable to "tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system." 54 FR. 50890, 50893, 50915 (Dec. 11, 1989); *see also* 56 FR 28228, 28240 (June 19, 1991). The word "installation" is intended to convey a meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Paragraph (c) has been proposed so that the rule will more clearly identify that any person or contractor that performs a function covered by this part will be held responsible for compliance. This is not a substantive change since contractors and others are currently responsible for compliance with this part as specified in § 240.11.

Section 240.5—Construction

FRA proposes to amend paragraph (a) so that the regulatory language used by FRA in all of its rules will become more standardized. This change explains the rule's preemptive effect. This proposed amendment reflects FRA's effort to address recent case law developed on the subject of preemption.

FRA proposes to amend paragraph (b) so that the regulatory language used by FRA in all of its rules will become more standardized. The only change is to remove the word "any." This minor edit would not be a substantive revision.

FRA proposes to amend paragraph (e) of this section by adding the words "or prohibit." The purpose of this modification was to clarify that the rule does not prevent "flowback." The term flowback has been used in the industry to describe a situation where an employee who is no longer qualified or able to work in his or her current position, can return to a previously held position or craft. An example of flowback occurs when a person who holds the position of a conductor subsequently qualifies for the position of locomotive engineer, and at some later point in time the person finds it necessary or preferable to revert back to a conductor position. The reasons for reverting back to the previous craft may be as a result of personal choice or of a less voluntary nature; e.g., downsizing, certificate ineligibility or revocation.

Many collective bargaining agreements address the issue of flowback. FRA does not intend to create or prohibit the right to flowback, nor does FRA intend to state a position on whether flowback is desirable. In fact, the exact opposite is true. As a result of discussions with the RSAC members, FRA has agreed to this clarification of the original intent of paragraph (e) so that it is understood by the industry that employees who are offered the opportunity to flowback or have contractual flowback rights may do so; likewise, employees who are not offered the opportunity to flowback or do not have such contractual rights are not eligible or entitled to such employment as a consequence flowing from this federal regulation.

Section 240.7—Definitions

The proposed rule would add seven terms and revise the definitions of another two terms. The term *Administrator* would be revised to standardize the FRA Administrator's authority in line with FRA's other regulations. The effect of this change would be to take away the Deputy Administrator's authority to act for the Administrator without being delegated such authority by the Administrator. The Deputy Administrator would also lose the authority to delegate, unless otherwise provided for by the Administrator.

A definition for *dual purpose vehicle* would be added to describe a type of vehicle that can sometimes substitute for a locomotive by hauling cars but can also be used in a roadway maintenance function. *Exclusive track occupancy* is proposed to be added since that term is used to clarify an exception to when certified locomotive engineers would not be required to operate service vehicles that have the ability to haul cars. The current rule uses the word qualified without defining it and the proposed rule expands the use of that term. The agency has previously neglected to define FRA as the Federal Railroad Administration, although that abbreviation has been used in the rule. FRA also proposes to define *person* rather than rely on a definition that currently appears in parenthetic remarks within § 240.11.

FRA proposes to redefine the term *railroad* so that it becomes standard language in all of FRA's regulations. These minor changes are not intended to change the applicability of the rule as is presently enforced.

Although FRA has previously defined the term *filing*, as in filing a petition, or any other document, with the FRA Docket Clerk, the rule has not defined what constitutes service on other parties. The proposed definition references the Rules 5 and 6 of the Federal Rules of Civil Procedure (FRCP) as amended. The intent is to incorporate the current FRCP rules and not perpetuate those FRCP rules that are in effect when this regulation becomes final. By defining the term *service*, the expectation is that the proposed rule would clarify the obligations of the parties and improve procedural efficiency.

A proposed definition for *Specialized roadway maintenance equipment* would be added to define a type of machine that may need to be operated by a certified locomotive engineer under certain circumstances. See § 240.104. Although similar, this equipment describes a subset of that equipment referred to in part 214 as a "roadway maintenance machine;" the main difference between these similar definitions is that a "roadway maintenance machine" may be stationary while *specialized roadway maintenance equipment* cannot be stationary.

Section 240.9—Waivers

FRA proposes to revise this section so that the language used in all of FRA's rules become more standardized. The proposed changes to paragraph (a) reflect FRA's current intent; that is, a person would not request a waiver of one of the rule's provisions unless they were subject to a requirement of this rule and the waiver request was directed at the requirement for which the person wished he or she did not have to abide by. Paragraph (c) would standardize language with other FRA rules which clarify the Administrator's authority to grant waivers subject to any conditions the Administrator deems necessary.

Section 240.11 Consequences for Noncompliance

FRA proposes to reword this section slightly. One change would respond to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Pub. L. 104–134, April 26, 1996 which required agencies to adjust for inflation the

maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties being proposed were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Proposed paragraphs (a), (b) and (c) would eliminate a parenthetic definition of person since FRA proposes to define *person* in § 240.7. The citation to a statute has also been proposed as a revision.

Subpart B—Component Elements of the Certification Process

Section 240.103—Approval of Design of Individual Railroad Programs by FRA

After the Working Group had concluded their meetings, FRA noted that this section was in need of updating. The numbered paragraphs under paragraph (a) set forth a schedule for implementing the original final rule. Since these dates have long since passed and any railroad that was conducting operations in 1991 and 1992 should have filed a written program pursuant to this section, the proposed rule suggests updating this section to address railroads commencing operations in the future. This would not be a substantive amendment since the proposed rule treats new railroads in the same way as the current rule. Thus, FRA is proposing the elimination of unnecessary paragraphs in the rule text.

Section 240.104—Criteria for Determining Whether a Railroad Operation Requires a Certified Locomotive Engineer

FRA proposes to add this new section to address the issue of what types of service vehicles should be operated by certified locomotive engineers. Since this was an issue of great interest to many members of the industry represented in the RSAC process, FRA has addressed this issue in detail in the preamble. The proposal presented attempts to reframe the issue by creating exemptions based on the type of operations in which these non-traditional locomotives are involved rather than simply focusing on the type of service vehicle.

Section 240.105—Criteria for Selection of Designated Supervisors of Locomotive Engineers

The change to paragraph (b)(4) requires that those persons who are DSLEs be qualified on the physical characteristics of the portion of the railroad on which they are supervising and that a railroad's program must address how the railroad intends to implement the qualification of a DSLE on the physical characteristics. FRA recommends that DSLEs acquire some operational experience over the territories they supervise because it is arguably the best method for learning how to operate over a territory.

The proposed addition of paragraph (c) is an effort to clear up several issues, some of which may not be obvious. These issues involve: (1) accommodating new railroads that have never certified a locomotive engineer or a DSLE; (2) accommodating railroads that may have had one or a few DSLEs at one time but no longer employ any qualified individuals; and (3) addressing how contractor engineers may be used. A regulatory amendment is necessary to address how railroads, who find themselves without a qualified and certified DSLE, can designate and train such individuals without reliance on outside sources. *See* 56 FR 28228, 28241–42 (June 19, 1991) (stating that a DSLE could be a contractor rather than an employee of the railroad).

One of FRA's philosophies in applying this rule has been that it certainly should not be an impediment to entrepreneurship. New or start-up railroads that have never certified a locomotive engineer or a DSLE have been unable to comply completely with this part without relying on outside sources to supply a certified DSLE. The same can be said of railroads that may have had one or a few DSLEs at one time but no longer employ any qualified individuals. It was never FRA's intent to force railroads to rely on outside sources in order to comply with the regulation. These proposed changes would provide railroads with better guidance than is currently found in the rule text.

For those railroads that do not have DSLEs, the addition of paragraph (c) will enable them to consider several options in creation of their first DSLE. (Once a railroad has its first DSLE, that first DSLE must certify the others by following the general rule rather than this exception). For example, the railroad could hire an engineer from another railroad in compliance with § 240.225 without having to comply with new paragraph (a)(5). If the individual is receiving initial certification or recertification, the railroad could comply with new paragraph (c) as an alternative to compliance with § 240.203(a)(4). Furthermore, the railroad could choose to work with a company that supplies experienced locomotive engineers that can be readily trained, qualified, and certified on the host railroad's territories.

FRA has received numerous inquiries regarding the use of outside contractors for certification purposes and for the temporary use of third party engineers during work stoppages. Section 5 of Appendix B in the current Part 240 regulation makes provision for railroads to use training companies (contractors). Actual certification must be done by the railroad. Use of an outside contractor and how that contractor will be used must be described in the railroad's plan submission.

For instance, a railroad may have temporary engineer employees supplied by a contractor where the contractor has conducted the hearing and visual acuity tests, the preemployment drug screens, the driver's data checks, and operating rules tests. However, the railroad is responsible for maintaining records of those tests since the railroad is the entity actually responsible for providing proper certification.

Any contractor providing temporary engineer employees must overcome the obstacle that the railroad is the entity that must issue the certificate, not the contractor. Therefore, while it is possible for a contractor to carry certificates for several or many different railroads, the contractor is burdened with keeping each of those certificates valid as required of any full-time engineer working for any particular railroad. Furthermore, in order for any engineer to remain certified, recertification must take place within three years on each certificate the person wants to keep valid. *See* § 240.201(c).

FRA hopes this discussion of contractors also clarifies how a short line railroad could manage to have only one full-time locomotive engineer (who is also a DSLE), yet still comply with all the testing required for compliance with the regulation. That is, a contractor could conduct all of the tests and checks for the short line railroad's engineer. The contractor-supplied temporary engineer and the short line railroad's engineer could also conduct the required annual check ride for each other. Of course, a copy of all records must be maintained by the railroad in accordance with § 240.215.

FRA wants to clarify that by empowering the "chief operating officer of the railroad" in paragraph (c) the Working Group's intention is that the person ultimately responsible for railroad operations makes this determination. It is not necessary for that person to have the title of "chief operating officer." This intention is

expressed by the use of lower case letters in identifying this person.

Section 240.111—Individual's Duty To Furnish Data on Prior Safety Conduct as Motor Vehicle Operator

Paragraphs (a) and (h) would be modified by changing the time limits from 180 days to 366 days. The Working Group members requested this change because they could demonstrate clear examples of the administrative difficulties being encountered in attempting to meet the current shorter period and the differences between the time periods. The concern that railroad safety could be diminished by lengthening the period of time that a person has to request and furnish data on his or her prior safety conduct as a motor vehicle operator will be directly addressed by the addition of paragraph (i). This new paragraph requires certified locomotive engineers to notify the employing railroad of motor vehicle incidents described in § 240.115(b)(1) and (2) within 48 hours of the conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license. This requirement boils down to an obligation for certified locomotive engineers to report to their employing railroad any type of temporary or permanent denial to hold a motor vehicle driver's license when the person has been found (by the state which issued the license) to have either refused an alcohol or drug test, or to be under the influence or impaired when operating a motor vehicle. With this new provision, railroads will be provided with timely data on two of the most serious safety misconduct issues certified locomotive engineers could have in conjunction with their motor vehicle operator's license that may readily transfer to the locomotive engineer context.

In accordance with the regulation and the timely motor vehicle operator's license data, the railroads will need to continue considering these data in a systematic way. This proposal would retain the requirements in § 240.115 that each railroad's program include criteria and procedures for evaluating a person's motor vehicle driving record. Paragraph (c) of § 240.115 requires that if such a motor vehicle incident is identified, the railroad must provide the data to an EAP Counselor along with "any information concerning the person's railroad service record." Furthermore, the person must be referred for evaluation to determine if the person has an active substance abuse disorder. If the person has such a disorder, the person shall not be currently certified. Meanwhile, even if the person is evaluated as not currently affected by an active substance abuse disorder, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare or follow-up testing for alcohol or drugs, or both.

Proposed paragraph (i) also states that, for purposes of locomotive engineer certification, a railroad cannot require a person to submit motor vehicle operator data earlier than specified in the paragraph. The reasoning behind this rule involves several intertwined objectives. For instance, some Working Group members did not want the employing railroad to revoke, deny, or otherwise make a person ineligible for certification until that person had received due process from the state agency taking the action against the motor vehicle license. Otherwise, action pursuant to this part might be deemed premature since the American judicial system is based on the concept of a person being innocent until proven guilty.

By not requiring reporting until 48 hours after the completed state action, the rule has the practical effect of insuring that a required referral to an EAP Counselor under § 240.115(c) does not occur prematurely; however, it does not prevent an eligible person from choosing to voluntarily self-refer pursuant to § 240.119(b)(3). Nor does it prevent the railroad from referring the person to an EAP Counselor pursuant to § 240.119 if there exists other information that identifies the person as possibly having a substance abuse disorder. Further, the restriction applies only to actions taken against a person's certificate and has no effect on a person's right to be employed by that railroad.

Section 240.113—Individual's Duty To Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad

Some Working Group members raised the fact that they have experienced occasions where they had difficulty complying with this section due to the time limit. Paragraph (a) would be modified by increasing the number of days an individual has to furnish data on prior safety conduct as an employee of a different railroad. The period was changed from 180 days to 366 days. The Working Group members requested this change because they recognized administrative difficulties in meeting the shorter period and the differences between time periods. FRA does not believe that railroad safety will be diminished by lengthening the period of time that a person has to request and furnish this data.

Section 240.117—Criteria for Consideration of Operating Rules Compliance Data

FRA last amended this section in its 1993 Interim Final Rule. Since that time, FRA has found that those rule changes had the desired results. However, FRA and the other RSAC members agreed that clarifications in the rule itself, and some minor changes would further improve the rule. In addition, substantial modifications are being proposed to the revocation periods to address some concerns that they were too long and did not encourage needed training.

First, paragraph (c) would be redesignated (c)(1) so that a related provision could be added as (c)(2). Paragraph (c)(2) clarifies what conduct is expected from a supervisor of locomotive engineers. FRA believes this is a clarification since supervisors are responsible for their conduct in the same manner as other certified engineers.

Specifically, paragraph (c)(2) identifies a general situation in which supervisors of locomotive engineers shall have their certification revoked. The thresholds to be met include whether a supervisor is monitoring a locomotive engineer and, while doing so, whether that supervisor fails to take appropriate action to prevent a violation of paragraph (e) of this section. For example, if a DSLE is monitoring a locomotive engineer and, while doing so, the train encounters a properly displayed Approach Signal, and the engineer is not taking effective action to stop at the next signal, the DSLE must take appropriate action. Another example would be a supervisor warning an engineer that the train is speeding and the engineer is in danger of causing a revocable event by operating the train at a speed exceeding 10 miles per hour over the maximum authorized speed.

Appropriate action does not mean that the supervisor must prevent the violation from occurring at all costs; the duty may be met by warning the engineer of a potential or foreseeable violation. Similar to the way in which the rule treats student and instructor engineers, the decision to revoke a supervisor's certification must be made on a case-by-case basis depending on the facts of the particular situation.

A supervisor of locomotive engineers who is involved in duties other than monitoring the locomotive engineer at the controls of the lead locomotive at the time an alleged violation of paragraph (e) occurs will not have his or her certification revoked. For example, if a System Road Foreman of Engines,

who is also a DSLE, is riding a train to evaluate the performance of new locomotives and is involved in one of the scenarios described above, his or her certification would not be in jeopardy for failure to take appropriate action. Of course, the railroad would be free to take whatever disciplinary or administrative action it deemed appropriate.

In clarifying when a supervisor's conduct will be considered a revocable event, the FRA believes that a supervisor who is conducting an unannounced operating rules compliance test, which is also known as an efficiency test, should not be held culpable for the operating locomotive engineer's actions. All the Working Group members agreed that it would defeat the purpose of these tests if supervisors were required to take appropriate action in order to prevent the operational misconduct events the supervisors are monitoring to find. Also, an unannounced operating rules compliance test is performed in a controlled environment so that the supervisor can test the engineer's skills without fear of causing an accident/incident. In contrast, the proposal would continue to hold supervisors (DSLEs) responsible during both the operational monitoring observation under § 240.129 and the skills performance test under § 240.127 since these observations and tests are conducted under uncontrolled actual operating conditions. By making this defense explicit, the intention is to provide an equivalent level of protection or due process to both supervisors and locomotive engineers.

The only change to paragraph (d) would involve shortening the period of 60 months to 36 months in reviewing prior railroad operating rule compliance. This change would bring the rule into line with the other changes made to this section.

The proposed change to paragraph (e) is an attempt to resolve confusion that might surface between the interplay of this section and § 240.1(b). According to § 240.1(b), this part prescribes minimum Federal safety requirements and does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with this part. It is possible that a railroad could interpret that section to permit them to revoke a person's certificate for misconduct events more stringent than articulated by rule. FRA wants to be clear that we do not hold that same interpretation and the Working Group wants FRA to clarify this issue by amending the regulation. By adding the word "only," the proposed paragraph (e) reads that "[a] railroad shall only consider violations of its operating rules and practices that involve * * * " Thus, the proposed regulation would limit the revocable events to only those listed in § 240.117(e).

Paragraph (e)(1) would be modified to reflect FRA's current interpretation that violations of hand or radio signal indications will not be considered revocable events. Although the agency had attempted to clarify its interpretation of this paragraph in the 1993 Interim Final Rule, FRA's preamble contained conflicting statements. As a result, this issue is ripe for clarification. The modification in the rule will alert the entire industry to a single standard to be applied universally and prevent the need for future misguided revocation proceedings.

In addition, FRA notes that a switch will not be considered a signal. Although some railroads define a switch as a signal, the Working Group agreed with the FRA's interpretation that it would be unfair to treat it as such for certification purposes. That is, a switch is not readily considered a signal given that its intended function is not to alert an engineer to stop. Instead, a switch's intended function is to enable a train to change the track it is operating over.

Paragraph (e)(2) defines what constitutes a speed violation requiring revocation. One modification to this paragraph is the elimination of the phrase "or by more than one half of the authorized speed, whichever is less." As a result of this phrase, violations of restricted speed and low speed violations not reaching 10 miles per hour over the maximum authorized speed could result in revocation. The new paragraph (e)(2) would add a sentence to include violations of restricted speed under certain conditions, however, the new provision would eliminate low speed violations resulting in revocations. For example, a person would no longer risk certificate revocation if the train he or she operated is traveling at 16 mph when the maximum authorized speed is 10 mph.

After the April 9, 1993, interim final rule was published, FRA realized that the application of paragraph (e)(2) to decertification of locomotive engineers for violations of restricted speed, or the operational equivalent of restricted speed, was not the same as the anticipated application. *See* 58 Fed. Reg. 18982. The problem with restricted speed was similar in nature to other problems FRA had hoped to fix with its 1993 interim final rule. That is, the current rule does not distinguish serious offenses from negligible offenses. Railroads, believing themselves to be under a regulatory mandate to take action even for offenses that might not have been the subject of disciplinary action, have in some cases decertified employees where FRA had not anticipated such actions. *See* 58 Fed. Reg. 18987. While FRA's 1993 regulatory language cleared up one set of ambiguities, that rule did not effectively address the subset of restricted speed violations.

Concerning the issue of restricted speed, the rule will formally publish FRA's interpretation on this issue. Generally, restricted speed rules provide a maximum speed and a conditional clause stating that a locomotive engineer must be able to stop the train being operated within one half the range of vision. Some railroads have argued that the very fact that a collision occurred or that a misaligned switch was run through at restricted speed, required the railroad to undertake the revocation process. While these incidents indicate a need for further railroad investigation, they will not always result in the need for decertification.

Note: This proposal also seeks to clarify that running through a switch will not be considered a violation of § 240.117(e)(1); i.e., a switch will not be considered a signal requiring a complete stop before passing it; however, running through a switch at restricted speed may be a revocable event when it is a reportable accident/incident pursuant to part 225.

Since FRA disagreed with the assertion that revocation should be mandatory each time a switch is run through or a collision occurs at restricted speed, the agency disseminated its interpretation through letters to industry associations and unions. As we noted when we adopted the initial provisions of this section, FRA's intent was to respond to the type of operational misconduct that was causing accidents. Implicit in FRA's approach was a focus on decertification for significant events instead of for every minor collision or movement through a misaligned switch.

FRA's interpretation of this regulation is captured in the second sentence of paragraph (e)(2) which states that "[r]ailroads shall consider only those violations of the conditional clause of restricted speed rules, or the operational equivalents thereof, which cause reportable accidents or incidents under 49 CFR Part 225 as instances of failure to adhere to this section." Depending on the specific language used in a railroad's code of operating rules, the operational equivalent of restricted speed refers to other limitations on train speed which

include the conditional clause similar to that previously described. Examples of some of the speed rules which are the operational equivalent of restricted speed include those that are called yard speed, reduced speed, caution speed, controlled speed or other than main track speed.

It is important to note that this interpretation, and expected regulatory amendment, does not and would not alter the agency's belief that the current rule is unambiguous concerning the maximum speed portion of the restricted speed rule. That is, if the locomotive or train is operated at a speed which exceeds the maximum authorized speed by at least 10 miles per hour, there would be no need to analyze whether a reportable accident/incident occurred since the conditional clause of the restricted speed rule would not be the violated provision.

Likewise, if a person violates any one of the other provisions of § 240.117(e) while operating at restricted speed, that person is subject to certification implications for violating that other provision. For example, a person operating a locomotive at restricted speed could be found to have violated § 240.117(e)(1) if he or she operated a locomotive past a signal indication that requires a complete stop before passing it. Any reference to damage thresholds would not be applicable since this other provision of § 240.117(e) was simultaneously violated.

This interpretation will benefit the railroad industry by providing a clear line of demarcation. The result should prevent the dilemma of a railroad bringing certification action against an engineer due to a railroad official's belief that federal law requires it to do so. Meanwhile, it will benefit both engineers and railroads by eliminating many truly minor accidents or incidents from impacting certification status.

FRA notes that it has not proposed any specific changes to paragraph (e)(3) which refers to certain brake test requirements in 49 CFR part 232. This paragraph will likely need amending prior to becoming a final rule since two other regulatory proceedings may result in new rules which may supersede this reference. FRA has currently proposed Passenger Equipment Safety Standards to be published at 49 CFR part 238. See 62 FR 49728 (Sept. 23, 1997(citing proposed §§ 238.313, 238.315, and 238.317). FRA also anticipates proposing changes to 49 CFR part 232 itself. See 63 FR 48294 (Sept. 9, 1998). In the final rule, FRA reserves the right to make conforming changes to this paragraph as necessary.

Paragraph (e)(4) would be revised by adding the words "or permission." FRA considers this revision as merely a clarification of the existing rule. In 1993, this paragraph was modified to prevent minor incidents from becoming revocation issues. The rule was changed so that entering "main track," instead of entering a "track segment," without proper authority would be considered operational misconduct. Main track is defined in § 240.7 as "a track upon which the operation of trains is governed by one or more of the following methods of operation: timetable; mandatory directive; signal indication; or any form of absolute or manual block system."

FRA has received inquiries into what is meant by the term "mandatory directive" as that word was used in the 1993 rule to clarify the definition of main track. FRA's intent was for this term to be defined in the same way that it has historically been defined in 49 CFR Part 220; that is, "mandatory directive" means "authority for the conduct of a railroad operation." It includes all situations where a segment of main track is occupied without permission or authority in accordance with a railroad's operating rules. However, it does not include advisory information, such as that from a yardmaster relative to which track to use in a yard. Hence, in order to clarify this point, FRA has added the words "or permission" in paragraph (e)(4).

Paragraph (e)(5) would clarify FRA's existing interpretation concerning what constitutes a tampering violation that requires revocation action. The change would add the phrase "or knowingly operating or permitting to be operated a train with a tampered or disabled safety device in the controlling locomotive." This clarification is intended to answer the question of whether "tampering" is defined only as operating with a safety device that was purposefully disabled by the person charged or whether tampering also means knowingly operating a train when the controlling locomotive of that train is equipped with a disabled safety device. Both FRA's current interpretation and the proposed changes concur that tampering can also mean knowingly operating a train when the controlling locomotive of that train is equipped with a disabled safety device.

FRA reached its current interpretation and this amending clarification by reviewing the RSIA and 49 CFR part 218, App. C. The RSIA required DOT to promulgate rules as necessary to prohibit the "willful tampering with, or disabling of" safety devices. Section 21 of the RSIA states in part that "[a]ny individual tampering with or disabling safety or operational monitoring devices in violation of rules, regulations, orders, or standards issued by [DOT], or who knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person, shall be liable for such penalties as may be established by [DOT], which may include fines under section 209, suspension from work, or suspension or loss of a license or certification issued under subsection (I) [of 45 U.S.C. 202]." Subsection (I) refers to the locomotive engineer certification rule which was introduced by Congress at the same time. Thus, it appears that Congress envisioned that a person who tampers with, knowingly operates, or permits to be operated a train with a disabled safety device could be liable for suspension or loss of locomotive engineer certification.

Moreover, the proposed change comports with the agency's existing regulations concerning tampering with safety devices. When devising this proposal, the Working Group referred to 49 CFR 218.55, 218.57 and part 218, App. C ("Statement of Agency Policy on Tampering"). After considering FRA's existing interpretations, it was concluded that extending this policy to locomotive engineers in the certification process was necessary.

Paragraphs (f)(2) and (3) would clarify FRA's existing interpretation that violations of the misconduct events listed in paragraph (e) of this section that occur during properly conducted operational compliance tests shall be considered for certification, recertification, or revocation purposes. One reason for further clarification is that some RSAC members complained that these operational monitoring tests can be used by supervisors to entrap engineers in tests that are unfair. For example, FRA has heard allegations that some supervisors have been able to get engineers decertified by hiding a fusee under a bucket and only revealing the fusee to the engineer at a point where it is impossible for the engineer to stop the train. Although FRA has not observed any such tests, the agency currently considers an "improperly" conducted operational test, i.e., a test not conducted according to a railroad's own operating rules, such as the alleged "bucket test," to be an improper reason for decertification. Hence, the agency agreed with the RSAC members that the rule needs amending to caution the regulated community that improper testing cannot lead to revocation. Meanwhile, the RSAC members agreed that an operational monitoring test pursuant to §§ 240.117 and 240.303 is

an evaluation of a locomotive engineer's skills and should, therefore, have certification consequences flow if violations occur.

The only change to proposed paragraph (g)(3)(i) was to correct a typographical error. The word "in" was added after the word "described."

Paragraphs (g)(3)(ii), (iii), and (iv) would be added for three purposes. One, an additional period of revocation was added so that it will take four, instead of the current three, separate incidents involving violations of one or more of the operating rules or practices pursuant to paragraph (e) before the longest period of revocation is implemented. Two, the periods of revocation have been shortened; hence, a second offense period is shortened from one year to six months and a third offense period is reduced from five years to one year. The occurrence of a fourth offense would trigger a three year revocation, instead of the current five year maximum. These two changes are desirable since the Working Group members agreed that the one year and five year penalties were overly punitive for second and third offenses respectively.

Third, the time interval in which multiple offenses would trigger increasingly stiffer periods of revocation would be reduced. As a result of these time interval reductions, if a period of 24 months, reduced from 36 months, passes between a first and second offense, the second offense revocation period will be treated in the same way as a first offense. If a period of 36 months, reduced from five years, passes between a second and third offense, or a third and fourth offense, this later offense will also be treated in the same way as a first offense.

Under both the proposed and current revocation period schedules, the period of revocation is based on a floating window. Hence, under the proposal, if a second offense occurs 25 months after the first offense, the revocation period will be the same as a first offense; however, if a third offense occurs within 36 months of the first offense, the revocation period will be one year. The anomaly will be that the person's certificate could be revoked twice for one month under paragraph (g)(3)(i) but that the third incident could result in a one year revocation under paragraph (g)(3)(iii) without the benefit of the interim six month revocation period under paragraph (g)(3)(ii). Although this may on its face appear to be peculiar, the Working Group members agreed that it was fair given the totality of the circumstances. FRA recommends that when computing a revocation period, one should review whether there were any other revocation incidents during the prior 24 and 36 months from the most recent incident; creation of a timetable can be useful in making this determination.

The proposed rule would add paragraph (g)(4) to retroactively apply the new, shorter periods of ineligibility to most incidents that have occurred prior to the effective date of this rule. The Working Group discussed the fairness of retroactively applying this rule rather than leaving the more burdensome, longer periods of revocation in place for those people who hold revoked certificates. In addition, the Working Group discussed their intent that future ineligibility periods would be determined by the "floating window" effective on the date of the next incident. Since the date of the subsequent incident is the deciding factor, it should be unnecessary to address this issue in the rule text. Furthermore, although § 240.5(e) already states that this part shall not be construed to create any entitlement, the Working Group noted that they did not intend to create a right to compensation for any employee who may have benefited by a reduced period of ineligibility as a result of the addition of paragraph (g)(4).

Paragraph (h) would be amended by adding the words "or less" after "one year." The reason for this amendment is to capitalize on the addition of a separate revocation period for a fourth offense and to allow further mitigation of what has been perceived by the RSAC members as penalties that are too harsh. That is, the railroads' discretion to reduce a revocation period has been extended from only second offenses to first, second, and third offenses. As before, all of the requirements of (h) would need to be met prior to a reduction in a revocation period. Also, a reference to paragraph (g)(2) has been corrected to cite to (g)(3).

Paragraph (j) and its subparagraphs utilize the same technique as previously used in paragraph (i) to make a fair transition after amendments are made to the regulation. This additional paragraph would resolve questions concerning the validity of railroad decisions made in conformity with the provisions of this section prior to its proposed revisions by this amendment. Railroad decisions made in conformity with the initial wording of this section were valid at the time they were rendered and it is not the Working Group's recommendation or FRA's intent to retroactively invalidate those decisions.

Although the Working Group believes that the prior decisions should not be rendered invalid by this amendment, as a matter of fairness to those who violated the underlying railroad rule under the previous wording of this provision, those incidents should not have further prospective effect on the certification status of those locomotive engineers. Under §§ 240.117(d) and (g), prior incidents of operational misconduct result in progressively longer periods of ineligibility. Proposed § 240.117(j) precludes railroads from considering prior incidents that would no longer violate the rule. Not all prior railroad decisions are affected. Only operational misconduct incidents that would not be a violation under the proposed rule are affected. Subsection 240.117(j) identifies those events. In drafting proposed § 240.117(j), the Working Group was attempting to be fair to both railroads and employees. The railroads should not be penalized for complying with the rule as it previously read. Moreover, any economic consequences suffered by employees came as a result of the railroad's operation of its disciplinary authority. If the exercise of that authority was proper at the time, a change in the federal rule does not alter that determination. However, because the RSAC has now determined that, henceforth, certain types of incidents are too minor to warrant decertification, further reliance on such lesser violations would be unfair to the employee. Even though such violations were appropriately handled at the time, giving them a cumulative effect in the certification process no longer makes sense in terms of RSAC's new perception of their importance to the Federal scheme.

Section 240.121—Criteria for Vision and Hearing Acuity Data

The main purpose behind the proposal to amend this section is to prevent potential accidents due to a locomotive engineer's medical condition that could compromise or adversely affect safe operations. Although FRA originally desired that RSAC review the current medical qualifications, this issue gained greater urgency following the investigation of a collision in which a locomotive engineer's alleged deteriorating vision was considered a factor. See Railroad Accident Report—Near Head-On Collision and Derailment of Two New Jersey Transit Commuter Trains near Secaucus, New Jersey, February 9, 1996 (NTSB/RAR–97/01). Specific recommendations were made by the NTSB and those recommendations were

directly addressed by RSAC in paragraphs (b), (c)(3), (e) and (f). See NTSB Safety Recommendation R–97–1 and R–97–2, which were previously discussed in the preamble section titled "D. Revisiting the Standards for Hearing and Vision."

Paragraph (b) suggests two modifications in order to address the factual concern identified in NTSB's investigation. One, a reference to newly proposed Appendix F has been added so that the color vision tests, and scoring criteria would be specified. Two, the testing procedures and qualification standards are specified by recommending that the tests be performed in accordance with the directions supplied by the manufacturer of the chosen test or any American National Standards Institute (ANSI) standards that are applicable. As requested by the NTSB, this proposal was based on expert guidance from several railroad medical officers, an FAA medical officer and an NTSB medical officer. While the second modification is a recommendation and not a requirement, FRA's position is that the proposal would provide sufficient guidance to those administering the tests as to where they should look in confirming that they are conducting the tests properly; by including this recommendation, FRA would be calling attention to the need for test administrators to follow proper medical testing methodology and thereby avoid the problem of mistakenly providing the wrong type of test.

It was suggested that paragraph (c)(3) be amended to address NTSB recommendation R–97–1. For instance, a reference to proposed Appendix F was necessary to integrate the specified color vision tests proposed. The word "railroad" was added before "signals" to further elaborate to the medical examiners conducting such tests that the key is being able to distinguish railroad signals; without such a clarification, the medical experts warned that medical examiners unfamiliar with the railroad environment might focus their attention on colors that do not appear as railroad signals. Another clarification to this paragraph is the addition of the words "successfully completing one of the tests." The task force discussed that although these tests should be readily available, not every medical office will have more than one of these tests. In addition, given the specified failure criteria, it would be unnecessary to initiate multiple tests if one is successfully completed since that would be redundant.

Paragraph (e) would be amended to include the words "upon request." The reason for adding these words is to create a right for a person who has failed to meet the required vision or hearing acuity standards. The effect will be that instead of a railroad having the discretion to determine whether a person is otherwise qualified to operate a locomotive, the person has a right to request such a medical evaluation from the railroad's medical examiner. The objective in making this change is to encourage uniform and consistent actions so that persons with similar medical deficiencies will be treated similarly.

Other significant changes to paragraph (e) are proposed based on the task force finding that some railroad medical examiners either do not work directly for the railroad or are unfamiliar with railroad operations. The most significant proposal to address this concern would require the medical examiner to consult a designated supervisor of locomotive engineers (DSLE) prior to determining whether a person who fails to meet any hearing or vision standard has the ability to safely operate. Currently, there is no explicit consultation requirement although good sense would suggest that a medical examiner should consult someone with railroad expertise if they had any questions about railroad operations. The task force clearly intended for the decision to remain with the medical examiner, not the DSLE.

The following proposals also attempt to educate the medical examiner who may be unfamiliar with FRA's rule or railroad operations. By requiring that the railroads provide their medical examiners with a copy of this part as amended, it should insure that those conducting the tests will use approved tests and understand the standards to be met. The words as amended are intended to require that the railroad provide updated copies of the regulation when future proposed changes become effective.

Paragraph (f) is intended to achieve similar goals to those suggested by NTSB. It would create a reporting obligation for any certified locomotive engineer based on objective, deteriorating changes in a person's hearing or vision that is likely to effect safety. In practice, it would be expected that the railroad would need to take appropriate steps to evaluate a person who notifies the railroad's medical department or an appropriate railroad official of this condition. Certainly, it is reasonable for FRA to expect that a railroad will retest such a person to determine the extent of the deteriorating condition. Most likely, it would be necessary for a medical examiner to follow the requirements of paragraph (e) of this section, which would include a consultation with a DSLE.

In developing paragraph (f), the medical officers advising the task force recommended using the phrase "best correctable vision or hearing." This recommendation recognizes that a person could have suffered deterioration to any aspect of their hearing or vision, and yet corrective lenses or a more powerful hearing aid could provide the person with a level of vision or hearing that is equivalent, or better, to what the person had prior to the deterioration. In addition, while the individual should be concerned and may want to report any deteriorating vision or hearing to the railroad, the requirement to report would be limited to those instances in which the deteriorating condition results in the person no longer meeting one or more of the prescribed vision or hearing standards or requirements of this section despite the use of corrective devices. FRA's position is that this proposal is unambiguous as to the person's obligation and should be enforceable if made final.

Section 240.123—Criteria for Initial and Continuing Education

Paragraphs (d), (d)(1), and (d)(2) would be added to help resolve numerous inquiries FRA has received regarding how engineers can become familiar with the physical characteristics of a territory on new railroads being created, or on portions of a railroad being reopened after years of non-use. The new paragraphs seek to clarify the rule and reflect FRA's current interpretation. The Working Group recommended that rather than have the agency repeatedly address these issues on a case-by-case basis, it would be a better use of resources, and fairer to all parties, if the guidance were published so that FRA would treat all railroads uniformly, not be overly burdensome, and not compromise safety.

Initially, the Working Group sought to address this issue in an appendix to the rule. The idea was that this information is guidance not requiring a rule change. Based on further evaluation, the Working Group recognized that the purposes of the guidance would substantively change the rule. Thus, a place for this proposed guidance has been integrated into the rule text itself.

Section 240.127—Criteria for Examining Skill Performance

DSLEs are required to conduct skill performance tests pursuant to § 240.127. This formal test is required prior to

initial certification or recertification of the engineer. A consensus was reached that a DSLE can determine an engineer's train handling abilities without being familiar with the territory over which the engineer is operating. Based on that consensus, the Working Group decided that the proposed rule should not require DSLEs to be qualified on the physical characteristics of the subject territory in order to conduct this test.

Meanwhile, § 240.127(c)(2) requires that the testing procedures selected by the railroad shall be conducted by a DSLE. Without an exception, a Catch-22 issue arises as to whether it is possible for a railroad to designate a person as a DSLE when that person does not meet the definition of a DSLE (because the person is not qualified on the territory over which the person is supposed to conduct a skill performance test). To relieve this conflict, the Working Group's solution was to propose that § 240.127(c)(2) be amended so that it would read "Conducted by a designated supervisor of locomotive engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted." This proposal accommodates the Working Group's findings regarding the need for qualified DSLEs.

Subpart C—Implementation of the Certification Process

Section 240.217—Time Limitations for Making Determinations

All of the modifications being proposed for this section involve changes to time limits. The RSAC members requested these changes because they recognized administrative difficulties in meeting the shorter and inconsistent periods. FRA does not believe that these time extensions will make the data so old that they will no longer be indicative of the person's ability to safely operate a locomotive or train.

When the rule was originally published, time limits were established which seemed reasonable and prudent. The rule contained numerous time limits of varying length, which has lead to confusion by those governed by the rule. Since publication of the rule, experience by the regulated community has shown the potential for simplification and consistency without sacrificing safety.

Section 240.223—Criteria for the Certificate

The proposed amendment to paragraph (a)(1) would require that each certificate identify either the railroad or "parent company" that is issuing it. This change would provide relief to companies, primarily holding companies that control multiple short line railroads, from having to issue multiple certificates. For these companies, complying with the current requirement of identifying each railroad has become a major logistical problem. ASLRRA, the original author of this proposal, has stated that a holding company managing multiple short line railroads is the equivalent of a major railroad operating over its many divisions; thus, it is fair to treat them similarly. However, the individuals must still qualify under the program of each short line railroad for which they are certified to operate and each of those railroads must maintain appropriate records as required by this part.

Section 240.225—Reliance on Qualification Determinations Made by Other Railroads

The proposed modification of this section addresses several concerns. First, new paragraph (a) addresses the perception that the larger railroads often administer a more rigorous training program than the smaller railroads due to the nature of their operations. While the Working Group did not intend to minimize the quality of the training programs of many smaller railroads or the expertise and professionalism of their locomotive engineers, it did intend to address the fact that small railroads often have more straightforward operations which are geographically compact and not topographically diverse.

The proposal would require a railroad's certification program to address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. By articulating both the problem and mandating the safe solution, the Working Group believes the proposal will save resources.

This issue is of considerable moment due to the current economic climate. Railroad ton-miles per year are at historically high levels. Whereas a few years ago, the industry was offering severance packages to train and engine crews, more recently the demand for skilled workers in these crafts has led to significant hiring of new employees. Larger railroads have found smaller railroads to be fertile fields for such hiring efforts.

One example of such a problem might involve a train service engineer from a Class III operation. That person would probably be trained under the standard Class III certification program and, therefore, would receive approximately 3 and ½ weeks of training. This is the minimum training acceptable for basic railroad yard type operations (slow speed moves with limited numbers of cars). This training would not be acceptable for Class I and II railroad operations since these usually encompass higher speeds, heavier and longer trains, and utilize more complex methods of operation.

Section 240.229—Requirements for Joint Operations Territory

The proposal to amend paragraph (c) reflects a Working Group desire to realign the burden for determining which party is responsible for allowing an unqualified person to operate in joint operations. These changes are based on the experiences of the Working Group members who believe that an inordinate amount of the liability currently rests with the controlling railroad. The perceived unfairness rests on the fact that it is not always feasible for the controlling railroad to make all of the determinations required of current paragraph (c). The guest railroad may provide the controlling railroad with a long list of hundreds or thousands of locomotive engineers that it deems eligible for joint operations; following up on a long, and ever changing list is made much more difficult since a controlling railroad does not control the personnel files of the engineers on this list.

The proposed realignment would lead to a sharing of the burden among a controlling railroad, a guest railroad and a guest railroad's locomotive engineer. The parties responsibilities are found respectively in paragraphs (c)(1) through (3). Although a controlling railroad still has the same obligations to make sure the person is qualified, paragraph (c)(2) would require that a guest railroad make these same determinations before calling a person to operate in joint operations. Paragraph (3) reiterates the responsibility the rule places on engineers to notify a railroad when the person is being asked to exceed certificate limitations. While this proposed amendment might seem duplicative to some people in light of § 240.305(c), the Working Group believed that some people might not readily recognize their responsibility unless specifically referenced in this section.

Section 240.231—Requirements for Locomotive Engineers Unfamiliar With Physical Characteristics in Other Than Joint Operations

The proposed addition of this section will improve safety and clear up a complicated issue. Section 240.1 requires "that only qualified persons operate a locomotive or train." The term qualified has a proposed definition in § 240.7; that definition states that qualified "means a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified." The rule is currently silent as to the use of pilots except for joint operations territory pursuant to § 240.229(e); however, even in this exception, a qualified person is described as "either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the * * * necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory." Therefore, while the regulation does not preclude a locomotive engineer from operating under the direction of a qualified engineer pilot, FRA's official interpretation is that other employees may not serve as pilots even if they are qualified on the operating rules and physical characteristics of the territory. This is a controversial interpretation since railroads have a history of using conductors and other craft employees as pilots.

The changes to the rule reflect a true consensus-built proposal that recognizes the complexity of the problem. Simply requiring locomotive engineer pilots in all situations, or in no situations, is neither practical nor desirable. Hence, while supervisors of locomotive engineers may need to consult the rule more frequently in order to ensure compliance, the rule will accommodate more flexibility than the current FRA position that only locomotive engineer pilots are acceptable.

Paragraph (a) is a general statement of policy that explicitly states the basic concept that, unless an exception applies, only certified engineers who are also qualified on the territory upon which they are to operate are truly qualified. Paragraph (b) allows a non-qualified engineer to have a pilot while (b)(1) and (b)(2) identify what type of person may serve as a pilot depending on different conditions. In either case, paragraph (b) would specifically require that a railroad's program must address how these individuals will attain qualifications for pilot service.

Paragraph (b)(1) would require that when an engineer has never been qualified as an engineer on a territory, the railroad must provide a certified engineer pilot who is both qualified and not an assigned crew member. The reasoning behind an engineer pilot in this instance lies on the fact that engineers must have a more detailed knowledge of the physical characteristics than persons of other crafts in order to anticipate how to safely operate their trains. Meanwhile, the requirement that this certified engineer pilot not be a crew member is based on the idea that crew members would have their own duties that would prevent them from providing the controlling engineer their undivided attention. Certainly, this undivided attention is necessary when the controlling engineer has no expectation of what physical characteristics of the territory are like around the next curve or past the next signal.

Paragraph (b)(2) would allow any qualified person to be a pilot if the controlling engineer was previously qualified on the territory and lost that qualification due to time limitations. Of course, a railroad could choose to use a qualified engineer pilot, but this provision allows the railroad more flexibility. The concept behind easing the engineer pilots only requirement relies on the Working Group members' experiences; that is, engineers who have been previously qualified on a territory would need less guidance and expertise to refamiliarize themselves with the physical characteristics of that territory.

Paragraph (c) would allow certified engineers who are unqualified on the physical characteristics of a territory to operate trains under specific circumstances. The four circumstances only apply to track segments with an average grade of less than one percent (1%) over a distance of three (3) miles. In other words, if a movement requires the engineer to operate on a track with heavy grade, a pilot will be required regardless of the four circumstances.

Paragraph (c)(1) would allow certified engineers to operate without a pilot on tracks other than a main track, regardless of distance. FRA suggests that where railroads anticipate the need to apply this exclusion, switch targets indicate names or numbers so that engineers who are unfamiliar with a rail yard can safely move their trains to the designated location within the rail yard. Most train operations conducted off main track require reduced speed limitations and thus have fewer and less severe safety implications.

Paragraph (c)(2) would allow certified engineers to operate on a main track without a pilot for a distance not exceeding one mile, regardless of maximum authorized speed. As an example, this exception would allow an unqualified engineer to operate movements from a yard on the south side of a main track, using the main track for less than a mile, to a yard on the north side of the main track.

Paragraph (c)(3) would allow certified engineers to operate on any track without a pilot, regardless of distance, provided the established or permanent maximum authorized speed limit for all operations does not exceed 20 miles per hour.

Paragraph (c)(4) would allow certified engineers to operate on any track without a pilot, regardless of distance where existing operating rules require movements to proceed prepared to stop within one half the engineer's range of vision. This does not allow railroads to make special requirements of only their engineers who are not qualified; that is, the conditional clause of the restricted speed type restriction must apply to all operations on that track. Hence, it would be a violation of the rule if a railroad ordered an engineer who is not qualified to operate on a main track with restricted speed instructions that did not also apply at all times to every other locomotive and train operation on that track.

In considering whether to suspend or revoke a person's certificate when the person is operating pursuant to one of the exceptions in paragraph (c), the railroad should consider the following issues: (1) whether the locomotive engineer notified a railroad official that he or she was unqualified to operate over the territory; (2) whether the locomotive engineer was ordered by a railroad official to operate over the territory despite the official's knowing that the locomotive engineer was unqualified; and, (3) if one of the exceptions in paragraph (c) applied, whether there was a direct relationship between the alleged operational misconduct event pursuant to § 240.117(e)(1) through (5) and the locomotive engineer's unfamiliarity with the territory.

If an alleged violation is caused by the engineer's territorial unfamiliarity, proposed § 240.307(i) could be referenced as a defense to the alleged misconduct. For example, if an engineer is operating for a distance of less than one mile without a pilot and the train passes a signal requiring a complete stop that was around a curve, it is

arguable that the engineer passed the signal due to his or her unfamiliarity and lack of a pilot; thus, revoking an engineer's certificate under such circumstances would be improper.

On the other hand, if an alleged violation occurs that is unrelated to the engineer's unfamiliarity with the territory, the engineer would be held liable for his or her conduct. For example, if an engineer is operating without a pilot in unfamiliar territory and the type of operation requires that any operation on the track does not exceed 20 MPH pursuant to § 240.231(c)(3), than an engineer should probably have his or her certificate revoked for operating at 10 MPH or more above the maximum authorized speed. It is unlikely under such conditions that the physical characteristics somehow would have helped cause the alleged violation since a pilot would be required if the unfamiliar territory was over heavy grade. *See* § 240.231(c).

Subpart D—Administration of the Certification Program

Section 240.305—Prohibited Conduct

Parallel to the discussion in the section-by-section analysis above concerning § 240.117(c)(2), the Working Group recommended adding paragraph (a)(6) to strengthen FRA's authority to take enforcement action against DSLEs under appropriate circumstances. That is, a DSLE, who is already a certified locomotive engineer, must realize that if he or she allows prohibited conduct to occur without taking "appropriate action," other than in a test monitoring capacity, FRA could take enforcement action against the DSLE. "Appropriate action" is not defined in the regulation and would depend on the facts and circumstances of each case.

The regulatory language, and the reasoning behind that language, mirrors the § 240.117(c)(2) amendment. Given FRA's authority pursuant to § 240.11, it is arguable that the agency currently has this authority. However, to reiterate, this amendment certainly would put supervisors on notice that they cannot actively or passively acquiesce to misconduct events caused by certified engineers they are observing.

In addition, several paragraphs would be added to § 240.305(a) so that the prohibited conduct list is equivalent to the list of misconduct events in § 240.117(e) which require the railroad to initiate revocation action. This section is needed so that FRA may initiate enforcement action. For example, FRA may want to initiate enforcement action in the event that a railroad fails to initiate revocation action or a person is not a certified locomotive engineer under this part. Furthermore, FRA will make conforming changes to paragraph (a)(3) as necessary considering proposed Passenger Equipment Safety Standards to be published at 49 CFR part 238. See 62 FR 49728 (Sept. 23, 1997. Also, FRA anticipates proposed changes to 49 CFR part 232 that may requiring conforming changes to paragraph (a)(3). See 63 FR 48294 (Sept. 9, 1998).

Section 240.307—Revocation of Certification

When the final rule was published in 1991, FRA intended that the notice of suspension in paragraph (b) would be written notice. FRA explicitly stated in the preamble to that first final rule on this subject that "[p]aragraph (b) requires that before suspending a certificate, or contemporaneous with the suspension, the railroad shall give the engineer written notice of the reason for the pending revocation action and provide an opportunity for a hearing." 56 FR 28228, 28251 (June 19, 1991). Despite these intentions, the rule itself failed to specify that notice must be made in writing. Consequently, many persons effected by this rule have not received written notice of proposed actions against them.

FRA proposed to the Working Group that the word "written" be added to paragraph (b)(2) so that the agency's intentions would be reflected in the rule. The Working Group surprised FRA by countering that this was not the only problem with this paragraph and that without clarification, written notice would pose problems for some operations. A discussion ensued so the Working Group could identify the problems and attempt to resolve them.

The main problem identified by the addition of the word "written" to paragraph (b)(2) was that a railroad may be in "receipt of reliable information indicating the person's lack of qualification under this part," have the desire to immediately suspend the person's certificate, but lack the means to immediately draft a competent written notice. See § 240.307(b)(1). As a compromise, the Working Group proposed that the initial notice may be either verbal or written. Confirmation of the suspension must be made in writing at a later date. The amount of time the railroad has to confirm the notice in writing depends on whether or not a collective bargaining agreement is applicable. The Working Group believed that if no collective bargaining agreement is applicable, 96 hours is sufficient time for a railroad to provide this important information.

Another of the problems identified by the Working Group was that throughout § 240.307, the regulation refers to an individual whose function is the "charging official." Several Working Group members noted that the railroad industry does not generally use this term and that a better description of the individual the regulation is referring to would be "investigating officer." FRA voted for, and now proposes, the change of this term, but wants to clarify that the agency's position is that both terms refer to the railroad official who accepts the prosecutorial role.

Paragraph (c) would be modified to reflect the consequences of adding paragraph (i). Paragraph (i) provides specific standards of review for railroad supervisors and hearing officers to consider when deciding whether to suspend or revoke a person's certificate due to an alleged violation of an operational misconduct event. Pursuant to paragraph (i), either defense must be proven by substantial evidence.

One issue that has bothered both FRA and many persons affected by this rule involves the presiding officer's actions pursuant to paragraph (c)(10). Paragraph (c) specifies that unless a hearing is held pursuant to a collective bargaining agreement as specified in paragraph (d) or is waived according to paragraph (f), the railroad is required to provide a hearing consistent with procedures specified in paragraph (c). Paragraph (c)(10) requires that the presiding officer prepare a written decision, which on its face seems like a straightforward requirement. However, some petitioners have argued that procedural error has occurred when written decisions have been signed by a presiding officer's supervisor or a railroad official other than the presiding officer. The issue appears to be whether the presiding officer must also be the decision-maker or whether the presiding officer can merely take the passive role of presiding over the proceedings only. There is also a separate issue of whether a railroad official who is someone other than the presiding officer may have a conflict of interest that should disqualify that railroad official from signing the written decision; i.e., there may be the appearance of impropriety if the non-presiding railroad official has ex-parte communications with the charging official (or investigating officer). This kind of ethical issue could be raised in a petition to the LERB as a procedural issue and could be alleged to cause a petitioner substantial harm.

The agency's intentions were articulated in the preamble to the 1993

interim final rule. FRA stated that "FRA's design for Subpart D was structured to ensure that such decisions would come only after the certified locomotive engineer had been afforded an opportunity for an investigatory hearing at which the hearing officer would determine whether there was sufficient evidence to establish that the engineer's conduct warranted revocation of his or her certification." 58 FR 18982, 18999 (Apr. 9, 1993). FRA also discussed in this 1993 preamble how the revocation process pursuant to this part should be integrated with the collective bargaining process. FRA stated that if the collective bargaining process is used "the hearing officer will be limited to reaching findings based on the record of the hearing" and not other factors as may be allowed by a bargaining agreement; the rule was written to "guard against hearing officers who might be tempted to make decisions based on data not fully examined at the hearing." 58 FR 18982, 19000 (Apr. 9, 1993). Hence, it appears that the agency did not even contemplate that someone other than the presiding officer might make the revocation decision.

In contrast to the agency's initial position, several Working Group members said that their organizations have set up this process to allow someone other than the presiding officer to make the revocation decision. This other person is always a railroad official who reviews the record made at the railroad hearing. Although this is not what the agency expected when it drafted the original final rule in 1991, FRA and the LERB have found this practice acceptable as long as the relevant railroad official has not been the charging official (or investigating officer, as proposed). The theory of this NPRM is that fairness of the hearing and the decision is maintained by separating the person who plays the prosecutorial role from the person who acts as the decision-maker. Thus, the Working Group recommends and FRA proposes to codify this position in paragraph (c)(10). FRA has reservations, however, about such decisions being made by persons who have not had the opportunity to evaluate the credibility of witnesses in the case by receiving their testimony at first hand. FRA seeks comments on this issue.

Paragraph (i)(1) would make it explicitly known that a person's certificate shall not be revoked when there is substantial evidence of an intervening cause that prevented or materially impaired the person's ability to comply. FRA has always maintained this position and the RSAC members agreed that it would be useful to incorporate it into the rule. FRA expects that railroads which have previously believed they were under a mandate to decertify a person for a violation regardless of the particular factual defenses the person may have had, will more carefully consider similar defenses in future cases. In 1993, FRA stated that "[f]actual disputes could also involve whether certain equitable considerations warrant reversal of the railroad's decision on the grounds that, due to certain peculiar underlying facts, the railroad's decision would produce an unjust result not intended by FRA's rules." 58 FR 18982, 19001 (Apr. 9, 1993). The example FRA used in 1993 applies to this proposal as well. That is, the LERB "will consider assertions that a person failed to operate the train within the prescribed speed limits because of defective equipment." Similarly, the actions of other people may sometimes be an intervening cause. For instance, a conductor or dispatcher may relay incorrect information to the engineer which is relied on in making a prohibited train movement.

Meanwhile, locomotive engineers and railroad managers should note that not all equipment failures or errors caused by others should serve to absolve the person from certification action. The factual issues of each circumstance must be analyzed on a case-by-case basis. For example, a broken speedometer would certainly not be an intervening factor in a violation of § 240.117(e)(3) (failure to do certain required brake tests).

Paragraph (i)(2) would constitute an important change to the enforcement philosophy of this part and was a popular concept among the RSAC members. This section, which only applies to the operational misconduct events, requires railroads to forgo revocation when two criteria are met. First, the violation must be of a minimal nature; for example, on high speed track at the bottom of a steep grade, the front of the lead unit in a four unit consist hauling 100 cars enters a speed restriction at 10 miles per hour over speed, but the third unit and the balance of the train enters the speed restriction at the proper speed, and maintains that speed for the remainder of the train. Other examples would include slowing down for speed restrictions that are located within difficult train-handling territory, flat switching-kicking cars, snow plow operations, and certain industrial switching operations requiring short bursts of speed to spot cars on steep inclines. While a railroad would be free to take such disciplinary action as it deems appropriate consistent with the collective bargaining agreement and the Railway Labor Act, the consensus of the Working Group is that this is a violation so minimal that safety is not compromised and federal government intervention is not warranted.

However, a violation could not be considered of a minimal nature if an engineer blatantly disregarded the operating rules. For example, using the same consist and location in the previous example, if the entire train were operated through the speed restriction at 10 miles per hour over the prescribed speed, then the event could not be considered of a minimal nature.

Second, for paragraph (i)(2) to apply, there must also be substantial evidence that the violation did not have either a direct or potential effect on rail safety. This proposed defense would certainly not apply to a violation that actually caused a collision or injury because that would be a direct effect on rail safety. It would also not apply to a violation that, given the factual circumstances surrounding the violation, could have resulted in a collision or injury because that would be a potential effect on rail safety. For instance, an example used to illustrate the term "minimal nature" described a situation involving a train that had the first two locomotives enter a speed restriction too fast, yet the balance of the train was in compliance with the speed restriction; since the train in this example would not be endangering other trains because it had the authority to travel on that track at a particular speed, there would be no direct or potential effect on rail safety caused by this violation.

In contrast, if a train fails to stop short of a banner, which is acting as a signal requiring a complete stop before passing it, during an efficiency test, that striking of a banner may have no direct effect on rail safety but it has a potential effect since a banner would be simulating a railroad car or another train. Meanwhile, there is a difference between passing a banner versus making an incidental touching of a banner. If a locomotive or train barely touches a banner so that the locomotive or train does not run over the banner, break the banner, or cause the banner to fall down, this incidental touching should be considered a minimal nature violation that does not have any direct or potential effect on rail safety. This is because such an incidental touching is not likely to cause damage to equipment or injuries to crew members even if the banner was another train.

Similarly, if a train has verbal and written authority to occupy a segment of main track, the written authority refers to the correct train number, and the

written authority refers to the wrong locomotive because someone transposed the numbers, the engineer's violation in not catching this error before entering the track without proper authority could be considered of a minimal nature with no direct or potential effect on rail safety. Since the railroad would be aware of the whereabouts of this train, the additional risk to safety of this paperwork mistake is practically none. Under the same scenario, where there are no other trains or equipment operating within the designated limits, there may be no potential effect on rail safety as well as no direct effect.

Paragraph (j) would require that railroads keep records of those violations in which they elect not to revoke the person's certificate pursuant to paragraph (i). The keeping of these records is substantially less burdensome than the current rule since the current rule requires this type of recordkeeping plus the opportunity for a hearing under § 240.307. The purpose for keeping such records is so that FRA can oversee enforcement of the rule. As noted earlier in the preamble (when explaining one of RSAC's major issues as addressing safety assurance and compliance by clarifying railroad discretion), paragraph (j)(1) would require that railroads keep records even when they decide not to suspend a person's certificate due to a determination pursuant to paragraph (i). Paragraph (j)(2) would require that railroads keep records even when they make their determination prior to the convening of the hearing held pursuant to § 240.307.

Paragraph (k) would address concerns from some Working Group members that problems could arise if FRA disagrees with a railroad's decision not to suspend a locomotive engineer's certificate for an alleged misconduct event pursuant to § 240.117(e). The idea behind new paragraph (i) is that as long as the railroads make good faith determinations after reasonable inquiries, they should have a defense to civil enforcement for making, what the agency believes is, an incorrect determination. Since paragraph (i) will require the railroads to make some difficult decisions based on factual circumstances on a case-by-case basis, the RSAC members felt that it was only fair that the railroads should not be penalized for making what the agency in hindsight may decide to be the wrong decision. However, railroads shall be put on notice that if they do not conduct a reasonable inquiry or act in good faith, they are subject to civil penalty enforcement.

Section 240.309—Railroad Oversight Responsibilities

This recordkeeping section needs modification to better reflect the types of poor safety conduct identified in § 240.117(e). Paragraph (e)(3) would also need amending to include a reference to part 238 [Passenger Equipment Safety Standards] if that proposed rule becomes final. Paragraphs (e)(6), (7) and (8) currently concern train handling issues that are no longer considered operational misconduct events. Hence, the new paragraphs (e)(6), (7) and (8) mirror those operational misconduct events that were mistakenly left off this list of conduct that needs to be reported for study and evaluation purposes.

New paragraph (h) would correct a clerical error which had mistakenly created two paragraphs labeled as (e).

Subpart E—Dispute Resolution Procedures

Section 240.403—Petition Requirements

The proposed changes to paragraph (d) would shorten the amount of time an aggrieved person can take to file a petition with the LERB from 180 days to 120 days. The main reason for this change is wrapped up in the overall concept that the entire certification review process should be as short as possible because timely decisions are more meaningful. Another reason for shortening this filing period is that the RSAC members, many of whom have had significant exposure to the LERB petition process, found this time period unnecessarily long in order to complete a petition. These industry leaders recognize that the evidence typically needed for the LERB's review is readily available at the time the railroad makes its revocation decision. Petitioners need to send the LERB this evidence and add an explanation as to why they believe the railroad's decision was improper. Since this period of time was so great, some RSAC members reported that it only encouraged aggrieved persons to procrastinate before deciding whether to file a petition.

Section 240.405—Processing Qualification Review Petitions

Paragraph (a) would be modified to include a public pronouncement of FRA's goal to issue timely decisions. Many of the RSAC members applauded the thoroughness of the LERB's decisions; meanwhile, all of the Working Group members, including FRA, agreed that the LERB needs to issue all of its decisions in a timely fashion. As FRA discussed in the RSAC meetings, FRA has improved the process; however, FRA's efforts have led to mixed results. Therefore, by publishing FRA's goal of rendering decisions within 180 days from the date FRA has received all the information from the parties and stating that intention in a letter to Petitioner, FRA will be recognizing these decisions as projects requiring specific deadlines.

Paragraph (c) would lengthen the amount of time the railroad will be given to respond to a petition from 30 days to 60 days. After several years of responding to petitions, the RSAC members representing railroads complained of the great burden and difficulty they had in issuing timely responses. Although there was some reluctance to lengthening this period and thereby the overall process, there was consensus that this 30-day time period was unfairly short. FRA would expect that when possible, railroads will continue to file responses as soon as possible rather than wait until the sixtieth day to file.

Paragraph (d)(3) would be added so that railroads which submit information in response to a petition will be required to file such submission in triplicate. While this proposal creates an additional mandatory paperwork burden for the railroads that choose to respond, it should not be a great hardship since most railroads have been voluntarily supplying FRA with three copies of their submissions. Many submissions contain several hundred pages since they typically include a copy of the hearing transcript developed at the railroad on-the-property hearing pursuant to § 240.307. When the Docket Clerk receives a single copy of a railroad's response to a petition, the Docket Clerk typically makes two additional photocopies of the response or calls the railroad's representative to see if the railroad is willing to voluntarily provide two additional copies; consequently, making this a mandatory requirement will ease an administrative burden for FRA and clarify what FRA really needs to process the petition. Since persons filing petitions are specifically required to submit each petition in triplicate, this requirement would provide parity between the parties. Furthermore, without this requirement, the burden placed on the Docket Clerk could cause undesirable delay in this process.

Section 240.411—Appeals

Although FRA has proceeded without legal challenge, some questioned the fact that the current rule does not specify that the Administrator has the power to remand or vacate. A remand is a tool which allows the appellate decision-maker to send a case back to

the tribunal or body from which it was appealed for further deliberation. For example, if the Administrator reverses a judgment made pursuant to § 240.409, the Administrator may remand the matter for a new proceeding or hearing to be carried out consistent with the principles announced in the Administrator's decision. The authority to vacate may be necessary if the Administrator wishes to annul or set aside an entry of record or a judgment. Since the powers to remand and vacate should prove beneficial to the dispute resolution procedures, they are proposed as additions to paragraph (e).

The phrase "when these administrative remedies have been exhausted" is included as part of the regulation so that parties would understand that a remand, or other intermediate decision, would not constitute final agency action. The inclusion of this phrase is made in deference to those parties that are not represented by an attorney or who might otherwise be confused as to whether any action taken by the Administrator should be considered final agency action.

Appendix A to Part 240—Schedule of Civil Penalties

FRA proposes that footnote number 1 to this schedule of civil penalties should be revised to reflect recent changes in the law. The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Pub. L. 104–134, April 26, 1996 required agencies to adjust for inflation the maximum civil monetary penalties within the agencies jurisdiction. The resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

At the time it issues a final rule, FRA will consider whether any additional revision of the current penalty schedule is necessary. Although penalty schedules are statements of policy and FRA is not obligated to provide an opportunity for public comment, FRA would welcome comments on this issue.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking has been evaluated in accordance with existing regulatory policies and is considered to be nonsignificant under Executive Order 12866 and is not significant under the DOT policies and procedures (44 F.R. 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation of the proposed rule.

FRA expects that overall the proposed rule will save the rail industry approximately $890,000 Net Present Value (NPV) over the next twenty-years. The NPV of the total twenty-year additional costs associated with the proposed rule is $1,086,959. The NPV of the total twenty-year monetary cost savings expected to accrue to the industry from the proposed rule is $1,976,684. For some rail operators, the total costs they incur may exceed the total costs they save. For others, the cost savings will outweigh the costs incurred.

FRA believes it is reasonable to expect that several injuries and fatalities would be avoided as a result of implementing some of the proposed changes. FRA also believes that the safety of rail operations will not be compromised as a result of implementing the cost savings changes.

The following table presents estimated twenty-year monetary impacts associated with the proposed rule modifications.

Description	Costs incurred	Costs saved
Supervisors of Locomotive Engineers—.		
Qualifications	$1,053,207	.....
First Designated Supervisor	.....	$16,844
Extending Culpability	17,798	.....
Revocable Event Criteria (Speed)	.....	232,486
Ineligibility Schedule	.....	574,746
Vision and Hearing Acuity	14,185	.....
New Railroads/New Territories	.....	16,844
Pilots for Locomotive Engineers	.....	1,047,282
Written Notice of Revocation	1,769	.....
Added Railroad Discretion	.....	88,481
Total (rounded)	1,086,959	1,976,684
Net Savings (rounded)	.....	889,725

Additionally, note that the NPV of the total savings to individual locomotive engineers that commit second and third violations of railroad operating rules and practices within a three-year period is expected to total approximately $2,487,263 over the next twenty years. However, because one engineer's lost employment opportunity would remain another locomotive engineer's gained opportunity, these cost savings are presented for information purposes only.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires an assessment of the impacts of rules on small entities. "Small entity," is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The United States Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a "for-profit" railroad may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating" Railroads, and 500 employees for "Switching and Terminal Establishments." Table of Size Standards," U.S. Small Business Administration, January 31, 1996, 13 CFR part 121.

The proposed rule would affect small railroads as defined by the SBA. For government entities the definition of small entities is based on population served (50,000). Governmental jurisdictions and transit authorities providing intercity and commuter rail service impacted by this rulemaking do not serve communities with population levels below 50,000.

Because FRA does not have information regarding the number of people employed by railroads, it cannot determine exactly how many small railroads, by SBA definition, are in operation in the United States. Using the SBA parameters, Class III railroads would probably classify as small businesses. Therefore, FRA has issued an interim policy establishing the delineation of Class III as being representative of small businesses for the railroad industry. The Regulatory Flexibility Assessment for this NPRM is included in the Regulatory Evaluation that was placed in the docket for this rulemaking.

About 650 of the approximately 700 railroads in the United States are probably Class III railroads and would be considered small businesses by FRA. Small railroads that would be affected by the proposed rule provide less than 10 percent of the industry's employment, own about 10 percent of the track, and operate less than 10 percent of the ton-miles. Approximately 50 of these railroads are tourist, scenic, excursion, or museum railroads that operate on the general railroad system.

The proposed standards were developed by an industry Working Group that has members from ASLRRA that represent the interests of small freight railroads and some excursion railroads operating in the United States.

A representative of the Tourist Railway Association, Incorporated is a member of the Rail Safety Advisory Committee which was responsible for approving the proposed standards developed by the Working Group. Individual small rail operators have an opportunity to comment on this NPRM.

FRA has not estimated the level of impact of this rule on small entities at this time. The impact on a particular entity will vary in proportion to the size of the railroad. FRA requests information regarding the number of locomotive engineers employed by Class III railroads as well as information regarding the average number of locomotive engineer certification revocations that occur each year on Class III railroads. This information will assist FRA in estimating the level of impact on small entities.

FRA has identified four specific proposed requirements that would result in additional regulatory burden for small railroads. The proposed extension of culpability to DSLEs, locomotive engineers' right to receive further medical evaluation following a vision and hearing acuity test, distribution of the Final Rule to medical officers, and written notification of suspension of certification would all affect small railroads. The level of costs associated with these standards should vary in proportion to the size of each railroad. Railroads with fewer locomotive engineers would experience lower costs. These standards do not offer opportunities for larger railroads to experience economies of scale.

Also note that railroads would be relieved of some of the costs associated with current Federal regulations. Small railroads are actually expected to benefit relatively more than their larger counterparts from three particular proposals. The criteria for requiring pilots for locomotive engineers not qualified on the physical characteristics of a territory grant exemptions based on factors favorable to small railroads such as operating speed and type of terrain. The allowance for a single certificate for certified locomotive engineers qualified to operate on more than one railroad would have particular applicability to small railroads owned by holding companies. Finally, the joint operations requirement for the shared responsibility of determining which locomotive engineers are qualified to operate over the host railroad's territory would provide small railroads that provide other railroads trackage rights over all or part of their territory with significant opportunities for cost savings.

FRA expects that overall the economic benefits that would accrue to small railroads if the requirements of this proposal are implemented will exceed the regulatory costs. FRA is also confident that the costs associated with particular requirements will be justified by the safety benefits achieved.

The Working Group considered proposals made by the ASLRRA to provide small railroads with economic relief from some of the burdens imposed by the existing and proposed federal regulations addressing locomotive engineer qualifications and certification. Initially, the ASLRRA proposed that recertification of locomotive engineers occur every 5 years, versus the current 3 year interval. The Working Group considered this proposal. However, the proposal would decrease the level of confidence that railroads have regarding the level of safety with which trains are operated. The recertification process provides railroads with the opportunity to ascertain that locomotive engineers can operate trains in a safe manner. Unsafe locomotive engineer train operating practices are detected during the tests administered as part of the recertification process and can be corrected through appropriate training. Because the timing of training of locomotive engineers coincides with their recertification, lengthening the recertification interval could translate into delaying needed refresher training sessions. This would decrease the level of safety with which trains are operated. This extension would advance the economic interests of small entities but, would not advance the interests of rail safety.

Taking into account the safety concerns of the Working Group, the ASLRRA proposed that recertification remain at a 3 year interval, but that the National Driver Register (NDR) check and the hearing and vision tests be performed at 5 year intervals (instead of the current 3 year interval) for Class III railroads that do not operate passenger trains, do not operate in territory where passenger trains are operated, do not operate in territory with a grade of two percent or greater over a distance of two continuous miles or, do not operate in signal territory, and, within the past year, have not transported any hazardous materials in hazard classes 1 (explosives), 2.3 (poisonous gases) or 7 (radioactive materials). The rationale for allowing longer intervals between hearing and vision acuity tests for locomotive engineers in smaller operations is that on site management would be more likely to notice changes in a person's medical condition. By excluding territories with passenger rail traffic, steep grades, signals, and railroads that haul hazardous materials from the extension, the proposal limits the impact of the extension to situations with the lowest level of exposure to accidents and the lowest severity of accident.

Extending the interval between NDR checks, however, raises safety concerns. This NPRM proposes requiring implementation of an honor system through which locomotive engineers self report to the railroads their motor vehicle driving incidents involving reckless behavior. The NDR check for motor vehicle drivers will confirm whether there were any incidents of reckless behavior while driving a highway vehicle. This information provides employers insight into whether a person can be trusted with the operation of a locomotive. The potential, and in certain cases even the incentive, exists for locomotive engineers who operate cars under the influence of alcohol or drugs to not self-report and protect their certification and jobs. Increasing the interval between NDR checks would actually increase the amount of time an engineer could continue to operate trains without the railroad being aware of reckless motor vehicle driving incidents. This, in turn, would increase the risk of an accident occurring due to reckless behavior while operating a locomotive or train.

Nevertheless, in an attempt to expedite the regulatory process associated with this rulemaking the ASLRRA withdrew their proposal for extending intervals from this particular rulemaking activity. Thus, the intervals for both the NDR checks, as well as the hearing and vision tests, remain at 3 years. FRA remains open and receptive to exploring the merits of extending the interval between hearing and vision acuity tests based on supporting data that is presented.

FRA requests information regarding the monetary savings and costs as well as the safety impacts associated with providing greater flexibility to small entities affected by the proposed requirements. FRA also requests comment regarding implementation time frames for small railroads. In the past, so as not to unduly burden small entities, FRA has allowed for delayed implementation dates for railroads that have fewer than 400,000 annual employee hours. FRA requests information regarding any undue burdens that the proposed implementation dates would cause small entities.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
NEW REQUIREMENTS					
240.105—Selection Criteria For Design. Supervisors of Locomotive Engineers.	25 railroads	25 reports	1 hour	25	$425
Qualification—DSLEs—phys. characteristics.	698 railroads	698 amend	6 hours	4,188	164,728
240.111—Indiv. Duty to Furnish Data on Prior Safety Conduct as M.V. Operator.	698 railroads	400 calls	10 min	67	2,680
240.117—Criteria For Consideration of Operating Rules Compliance Data.	698 railroads	3 appeals	42 hours	126	5,040
240.121—Criteria—Hearing/Vision Acuity—First Year.	698 railroads	698 copies	15 min	175	5,425
Criteria—Hearing/Vision—Subseq. Yrs	25 new railroads	25 copies	15 min	6	186
Medical Examiner Consultation w DSLE.	698 railroads	17 reports	1 hour	17	527
Notification—Hearing/Vision Change	698 railroads	10 notificatns	15 min	3	120
240.229—Reqmnts—Joint Oper. Terr.	321 railroads	184 calls	5 min	15	600
240.307—Revocation of Certification	698 railroads	650 notices	10 min	108	3,348
240.309—Railroad Oversight Resp	43 railroads	10 annotation	15 min	3	120
CURRENT REQUIREMENTS					
240.9—Waivers	698 railroads	5 waivers	1 hour	5	165
Certification Program	25 new railroads	25 programs	200hrs/40 hrs	4,520	140,120
Final Review + Program Submission	25 new railroads	25 reviews	1 hour	25	775
240.11—Penalties For Non-Compliance	698 railroads	2 falsification	10 min	20 min	13
240.111—Request—State Driving Lic. Data	13,333 candidates	13,333 reqsts	15 minutes	3,333	133,320
Request for NDR Data—State Agency	50 candidate	50 requests	30 minutes	25	1,000
Response—State Agency—NDR Data	1 state/gov. entity	50 requests	15 minutes	13	403
Railroad Notification—NDR match	698 railroads	267 requests	30 minutes	134	4,757
Written Response from Candidate	698 railroads	267 comment	15 minutes	67	2,680
Notice to Railroad—No License	40,000 candidates	4 letters	15 minutes	1	40
240.113—Notice to Railroad Furnishing Data on Prior Safety Conduct.	13,333 candidates	267 requests/267 responses.	15 min/30 min	200	6,803
240.115—Candidate's Review + Written Comments—Prior Safety Conduct Data.	13,333 candidates	400 responses	30 min	200	8,000
240.123—Criteria For Init./Cont. Educ	30 railroads	30 amend	1 hour	30	1,200
240.201/223/301—List of DSLEs	698 railroads	698 updates	15 minutes	175	7,000
—List of Design. Qual. Loc. Engineers	698 railroads	698 updates	15 minutes	175	5,425
—Locomotive Engineers Certificate	40,000 candidates	13,333 cert	5 minutes	1,111	34,441
—List—Des. Persons to sign L.E. Cert	698 railroads	20 lists	15 minutes	5	165
240.205—Data to EAP Counselor	698 railroads	267 records	5 minutes	22	880
240.207—Medical Certificate	40,000 candidates	13,333 cert	70 minutes	15,555	1,555,50
240.209/213—Written Test	40,000 candidates	13,333 tests	2 hours	26,666	826,646
240.211/213—Performance Test	40,000 candidates	13,333 tests	2 hours	26,666	826,646
240.215—Recordkeeping—Cert. Loc. Eng	698 railroads	13,333 record	10 minutes	2,222	68,882
240.219—Denial of Certification	13,333 candidates	1,333 lettrs/1,333 respnse.	30 min./1 hr	2,000	73,997
—Written Basis For Denial	698 railroads	1,333 notific	1 hour	1,333	45,322
240.227—Canadian Cert. Data	Canadian RRs	200 certific	15 minutes	50	1,550
240.303—Annual Op. Monit. Obs.	40,000 candidates	40,000 tests	4 hours	160,000	6,400,000
Annual Operational Observation	40,000 candidates	40,000 tests	2 hours	80,000	3,200,000
240.305—Engineer's Non-Qual. Notific	40,000 candidates	400 notific	15 minutes	100 hours	4,000
Engineer's Notice—Loss of Qualification.	40,000 candidates	600 letters	1 hour	600	24,000
240.307—Notice to Engineer—Disqual	698 railroads	650 letters	1 hour	650	20,150
240.309—Railroad Oversight Resp	44 railroads	44 reviews	80 hours	3,520	197,120
240.401—Engineer's Appeal to FRA	698 railroads	76 petitions	2 hours	152	6,080
240.405—Railroad's Response to Appeal	698 railroads	76 responses	30 minutes	38	1,786
240.407—Request For a Hearing	698 railroads	11 responses	30 minutes	6	240
240.411—Appeals	698 railroads	2 notices	2 hours	4	160

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the

burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 25, 400 7th Street, S.W., Washington. D.C. 20590.

OMB is obligated to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this regulation in accordance with its procedure for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect 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. Thus in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 240

Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA proposes to amend Part 240, Title 49, Code of Federal Regulations as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 is revised to read as follows:

Authority: 49 U.S.C. Chs. 20103, 20107, 20135; 49 CFR 1.49.

2. Section 240.1 is amended by revising paragraph (b) to read as follows:

§ 240.1 Purpose and scope.

(a) * * *

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

* * * * *

3. Section 240.3 is revised to read as follows:

§ 240.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

4. Section 240.5 is amended by revising the title and paragraphs (a), (b) and (e) to read as follows:

§ 240.5 Preemptive effect and construction.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

(c) * * *

(d) * * *

(e) Nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

§ 240.7 [Amended].

5. Section 240.7 is amended by revising the definitions of *Administrator* and *Railroad* and adding definitions of *Dual purpose vehicle, Exclusive Track Occupancy, FRA, Person, Qualified, Service,* and *Specialized roadway maintenance equipment,* to read as follows:

* * * * *

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

* * * * *

Dual purpose vehicle means a piece of on-track equipment which can function as either a locomotive or specialized roadway maintenance equipment.

* * * * *

Exclusive Track Occupancy means a method of establishing work limits on controlled track in which movement authority of trains and other equipment is withheld by the train dispatcher or control operator, or restricted by flagmen, as prescribed in § 214.321 of this chapter.

* * * * *

FRA means the Federal Railroad Administration.

* * * * *

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Qualified means a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

* * * * *

Service has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. See also the definition of "filing" in this section.

* * * * *

Specialized roadway maintenance equipment is equipment powered by any means of energy other than hand power which is designed to be used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.

* * * * *

6. Section 240.9 is amended by revising paragraphs (a) and (c) to read as follows:

§ 240.9 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) * * *

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

7. Section 240.11 is amended by revising the title and paragraphs (a), (b) and (c) to read as follows:

§ 240.11 Penalties and consequences for noncompliance.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b) Any person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(d) * * *

8. Section 240.103 is amended by removing paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) and revising paragraph (a) to read as follows:

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B and shall submit its certification program for approval at least 60 days before commencing operations.

* * * * *

9. Section 240.104 is added to read as follows:

§ 240.104 Criteria for determining whether a railroad operation requires a certified locomotive engineer.

Any person who operates a locomotive or group of locomotives when moving with or without being coupled to other rolling equipment shall be a certified locomotive engineer except:

(a) Any person who operates specialized roadway maintenance equipment in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site; or

(b) Any person who operates a dual purpose vehicle which is:

(1) Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site;

(2) Moving under authority of rules designated by the railroad for maintenance of way equipment under the direct supervision of an employee trained and qualified in accordance with § 214.353 of this chapter, which rules provide Exclusive Track Occupancy for the roadway equipment with respect to trains;

(3) Being operated by an individual trained and qualified in accordance with §§ 214.341, 214.343, and 214.355 of this chapter; and

(4) When hauling cars, not less than 85% of the total cars designed for air brakes shall have operative air brakes.

10. Section 240.105 is amended by revising paragraph (b)(4) and by adding paragraph (c) to read as follows:

§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.

* * * * *

(b) * * *

(4) Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a designated supervisor of locomotive engineers.

(c) If a railroad does not have any Designated Supervisors of Locomotive Engineers, and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the Designated Supervisor of Locomotive Engineers designate possesses the necessary performance skills in accordance with § 240.127. This determination shall take into account any special operating characteristics which are unique to that railroad.

11. Section 240.111 is amended by revising paragraphs (a) introductory text, (a)(1), and (h), and adding paragraph (i) to read as follows:

§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) Except for initial certifications under paragraph (b), (h), or (i) of § 240.201 or for persons covered by § 240.109 (h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (i) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

* * * * *

(h) The actions required for compliance with paragraph (a) of this section shall be undertaken within the 366 days preceding the date of the railroad's decision concerning certification or recertification.

(i) Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in § 240.115(b)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle drivers license.

12. Section 240.113 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for initial certifications under paragraph (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

* * * * *

13. Section 240.117 is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have his or her certification revoked.

(2) A supervisor of locomotive engineers who is monitoring a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section, shall have his or her certification revoked. Appropriate action does not mean that a supervisor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A designated supervisor of locomotive engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

(d) Limitations on consideration of prior operating rule compliance data. Except as provided for in paragraph (i) of this section, in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraph (e) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

(e) A railroad shall only consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Railroads shall consider only those violations of the conditional clause of restricted speed rules, or the operational equivalent thereof, which cause reportable accidents or incidents under 49 CFR part 225, as instances of failure to adhere to this section;

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the transfer, initial, or intermediate terminal test provisions of 49 CFR part 232 (see 49 CFR 232.12 and 232.13);

(4) Occupying Main Track or a segment of Main Track without proper authority or permission;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218 subpart D and appendix C to part 218);

(6) Incidents of noncompliance with § 219.101 of this chapter; however such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of this section;

(f) (1) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(2) A violation of one or more operating rules or practices described in paragraph (e)(1) through (e)(5) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in paragraph (g) of this section.

(3) An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9, of this chapter will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, the person shall have his or her certificate revoked for a period of one month.

(ii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (e)(5) of this section, that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of six months.

(iii) In the case of three separate incidents involving violations of one or more of the operating rules or practices that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year.

(iv) In the case of four separate incidents involving violations of one or more of the operating rules or practices that occurred within 36 months of each other, the person shall have his or her

certificate revoked for a period of three years.

(v) Where, based on the occurrence of violations described in paragraph (e)(6) of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longest period of revocation shall control.

(4) Be reduced to the shorter periods of ineligibility imposed by paragraphs (g) (1) through (3) of this section, if the incident:

(i) Occurred prior to [effective date of the final rule]; and

(ii) Involved violations described in paragraphs (e)(1) through (5) of this section; and

(iii) Did not occur within 60 months of a prior violation as described in paragraph (e)(6) of this section.

(h) *Future eligibility to hold certificate.* Only a person whose certification has been denied or revoked for a period of one year or less in accordance with the provisions of paragraph (g)(3) of this section for reasons other than noncompliance with § 219.101 of this chapter shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of revocation. Such a person shall not be eligible for grant or reinstatement unless and until—

(1) The person has been evaluated by a designated supervisor of locomotive engineers and determined to have received adequate remedial training;

(2) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(3) At least one half the pertinent period of ineligibility specified in paragraph (g)(2) of this section has elapsed.

(i) In no event shall incidents that meet the criteria of paragraphs (i) (1) through (4) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to May 10, 1993;

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication;

(ii) Failure to adhere to limitations concerning train speed;

(iii) Failure to adhere to procedures for the safe use of train or engine brakes; or

(iv) Entering track segment without proper authority;

(3) Were or could have been found to be violations under this section in effect prior to May 10, 1993 and contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1992; and

(4) Would not be a violation of paragraph (e) of this section.

(j) In no event shall incidents that meet the criteria of paragraphs (j) (1) through (2) of this section be considered as prior incidents for the purposes of paragraph (g)(3) of this section even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under paragraph (g)(3) of this section are those that:

(1) Occurred prior to [effective date of the final rule];

(2) Involved violations of one or more of the following operating rules or practices:

(i) Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;

(ii) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour or by more than one half of the authorized speed, whichever is less;

(3) Were or could have been found to be violations under this section in effect prior to [effective date of the final rule and contained in the 49 CFR, parts 200 to 399, edition revised as of October 1, 1998]; and

(4) Would not be a violation of paragraph (e) of this section.

14. Section 240.121 is amended by revising paragraphs (b), (c)(3) and (e), and adding paragraph (f) to read as follows:

§ 240.121 Criteria for vision and hearing acuity data.

* * * * *

(b) *Fitness requirement.* In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(c) * * *

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix F.

(d) * * *

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. The railroad shall provide its medical examiner with a current copy of this part, including all appendices. If, after consultation with one of the railroad's designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(f) As a condition of maintaining certification, it is the obligation of each certified locomotive engineer to notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section.

15. Section 240.123 is amended by adding paragraph (d) to read as follows:

§ 240.123 Criteria for initial and continuing education.

* * * * *

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's plan submission as described in appendix B of this part.

(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the part 240 plan submission.

16. Section 240.127 is amended by revising paragraph (c)(2) to read as follows:

§ 240.127 Criteria for examining skill performance.

* * * * *

(c) * * *

(2) Conducted by a designated supervisor of locomotive engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted;

* * * * *

17. Section 240.217 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (c)(2) to read as follows:

§ 240.217 Time limitations for making determinations.

(a) * * *

(1) A determination concerning eligibility and the eligibility data being relied on were furnished more than 366 days before the date of the railroad's certification decision;

(2) A determination concerning visual and hearing acuity and the medical examination being relied on was conducted more than 366 days before the date of the railroad's recertification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated performance skills and the performance skill testing being relied on was conducted more than 366 days before the date of the railroad's certification decision;

(b) * * *

(c) * * *

(2) Rely on a certification issued by another railroad that is more than 36 months old.

* * * * *

18. Section 240.223 is amended by revising paragraph (a)(1) to read as follows:

§ 240.223 Criteria for the certificate.

(a) * * *

(1) Identify the railroad or parent company that is issuing it;

* * * * *

19. Section 240.225 is revised to read as follow:

§ 240.225 Reliance on qualification determinations made by other railroads.

After December 31, 1991, any railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. A railroad relying on another's certification shall determine that:

(a) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(b) The prior certification was for the same classification of locomotive or train service as the certification being issued under this section;

(c) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(d) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125;

(e) The person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

20. Section 240.229 is amended by revising paragraph (c) to read as follows:

§ 240.229 Requirements for joint operations territory.

* * * * *

(c) A railroad that controls joint operations may rely on the certification issued by another railroad under the following conditions:

(1) The controlling railroad shall determine:

(i) That the person has been certified as a qualified engineer under the provisions of this part by the railroad which employs that individual;

(ii) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(iii) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and,

(iv) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory; and,

(2) The railroad which employs the individual shall determine that the person called to operate on the controlling railroad is a certified engineer who is qualified to operate on that track segment; and,

(3) Any locomotive engineer who is called to operate on another railroad shall:

(i) Be qualified on the segment of track upon which he or she will operate in accordance with the requirements set forth by the controlling railroad; and,

(ii) Immediately notify the railroad upon which he or she is employed if he or she is not qualified to perform that service.

* * * * *

21. Section 240.231 is added to subpart C to read as follows:

§ 240.231 Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations.

(a) Except as provided in paragraph (b) of this section, no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program.

(b) Except as provided in paragraph (c), if a locomotive engineer lacks qualification on the physical characteristics required by paragraph (a), he or she shall be assisted by a pilot qualified over the territory pursuant to the railroad's program submission.

(1) For a locomotive engineer who has never been qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, the pilot shall be a person qualified and certified as a locomotive engineer who is not an assigned crew member.

(2) For a locomotive engineer who was previously qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, but whose qualification has expired, the pilot may be any person, who is not an assigned crew member, qualified on the physical characteristics of the territory.

(c) Pilots are not required if the movement is on a section of track with an average grade of less than 1% over 3 continuous miles, and

(1) The track is other than a main track; or

(2) The maximum distance the locomotive or train will be operated does not exceed one mile; or

(3) The maximum authorized speed for any operation on the track does not exceed 20 miles per hour; or

(4) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer.

22. Section 240.305 is amended by revising paragraph (a) to read as follows:

§ 240.305 Prohibited conduct.

(a) It shall be unlawful to:

(1) Operate a locomotive or train past a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; or

(2) Operate a locomotive or train at a speed which exceeds the maximum authorized limit by at least 10 miles per hour. Only those violations of the conditional clause of restricted speed rules, or the operational equivalent thereof, which cause reportable accidents or incidents under 49 CFR part 225, shall be considered instances of failure to adhere to this section; or

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the transfer, initial, or intermediate terminal test provisions of 49 CFR part 232 (see 49 CFR 232.12 and 232.13); or

(4) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission;

(5) Fail to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218 subpart D and appendix C to part 218);

(6) Be a supervisor of locomotive engineers who is monitoring a locomotive engineer and fails to take appropriate action to prevent a violation of paragraphs (a)(1) through (a)(5) of this section. A designated supervisor of locomotive engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

* * * * *

23. Section 240.307 is amended by revising paragraphs (b)(2), (c) introductory text and (c)(10), and adding paragraphs (i), (j), and (k) to read as follows:

§ 240.307 Revocation of certification.

* * * * *

(b) * * *

(2) Prior to or upon suspending the person's certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer. The notice may initially be given either verbally or in writing. If given verbally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours.

* * * * *

(c) Except as provided for in paragraphs (d), (f), (i) and (j) of this section, a hearing required by this section shall be conducted in accordance with the following procedures:

* * * * *

(10) At the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.

* * * * *

(i) The railroad shall not determine that the person failed to meet the qualification requirements of this part and shall not revoke the person's certification as provided for in paragraph (a) of this section if substantial evidence exists that:

(1) An intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117 (e)(1) through (e)(5); or

(2) The violation of §§ 240.117 (e)(1) through (e)(5) was of a minimal nature and had no direct or potential effect on rail safety.

(j) The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.215 for Class III railroads, if substantial evidence, meeting the criteria provided for in paragraph (i) of this section, becomes available either:

(1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section; or

(2) Prior to the convening of the hearing provided for in this section.

(k) Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in paragraph (i) of this section is appropriate, the railroad which does not suspend a locomotive engineer's certification, as provided for in paragraph (a) of this section, is not in violation of paragraph (a) of this section.

24. Section 240.309 is amended by revising paragraphs (e) introductory text, (e)(3), (e)(5), (e)(6), (e)(7), and (e)(8), removing paragraph (e)(10), and redesignating the second paragraph (e) as paragraph (h).

§ 240.309 Railroad oversight responsibilities.

* * * * *

(e) For reporting purposes, the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes in the following manner:

* * * * *

(3) Incidents involving noncompliance with the procedures required for compliance with the transfer, initial, or intermediate terminal test provisions of 49 CFR part 232;

(4) * * *

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the provisions of restricted speed, and the operational equivalent thereof, that require reporting under the provisions of part 225 of this chapter;

(7) Incidents involving occupying Main Track or a segment of Main Track without proper authority or permission;

(8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive;

* * * * *

25. Section 240.403 is amended by revising paragraph (d) to read as follows:

§ 240.403 Petition requirements.

* * * * *

(d) A petition seeking review of a railroad's decision to revoke certification in accordance with the

procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely.

26. Section 240.405 is amended by revising paragraphs (a) and (c), and adding paragraph (d)(3).

§ 240.405 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall contain the docket number assigned to the petition and a statement of FRA's intention that the Board will render a decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

(b) * * *

(c) The railroad will be given a period of not to exceed 60 days to submit to FRA any information that the railroad considers pertinent to the petition.

(d) * * *

(3) Submit the information in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

* * * * *

27. Section 240.411 is amended by revising paragraph (e) to read as follows:

§ 240.411 Appeals.

* * * * *

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action when these administrative remedies have been exhausted.

28. Appendix A to part 240 is revised to read as follows:

Appendix A to Part 240—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
[applicable sections and civil penalty amounts to be determined in final rule]		

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

* * * * *

29. Appendix F is added to read as follows:

Appendix F to Part 240—Medical Standards Guidelines

The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 240.121 and 240.207.

In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book).
Dvorine—Second edition	3 or more errors on plates 1–15.
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that "yellow signals" do not always appear to be the same. It is not acceptable to use "yarn" or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the above chart and § 240.121(c)(3).

Chromatic lenses may be worn in accordance with any subsequent testing pursuant to § 240.121(e) if permitted by the medical examiner and the railroad.

An examinee who fails to meet the above criteria, may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria from operating the train at night, during adverse weather conditions or under other circumstances.

Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, D.C. on September 8, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–24594 Filed 9–21–98; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801

Amended Economic Impact Analysis of Final Rule Requiring Use of Labeling on Natural Rubber Containing Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 96N–0119]

Amended Economic Impact Analysis of Final Rule Requiring Use of Labeling on Natural Rubber Containing Devices

Note: This document was originally published at 63 FR 46171, Monday, August 31, 1998. Appendix 1 was inadvertently omitted in the printed version. To correct this omission, the document is being republished in its entirety with Appendix 1.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; amended economic analysis statement.

SUMMARY: The Food and Drug Administration (FDA) is issuing an amended economic analysis statement relating to a final rule that published in the **Federal Register** of September 30, 1997 (62 FR 51021), requiring labeling statements concerning the presence of natural rubber latex in medical devices. This rule was issued in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber. The final rule becomes effective on September 30, 1998. In order to allow further comment on the economic impact of the September 30, 1997, final rule, FDA published in the **Federal Register** of June 1, 1998, an amended economic impact statement, including an amended initial regulatory flexibility analysis (IRFA) that it prepared under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA). After considering comments submitted in response to the June 1, 1998, amended economic analysis statement, FDA is issuing the amended final economic impact statement, including an amended final regulatory flexibility analysis.

DATES: The September 30, 1997, final rule is effective on September 30, 1998, except for products that contain natural rubber latex solely in cold-seal type packaging. The rule will not apply to these products for an additional 270 days from the September 30, 1998, effective date of the final rule. Elsewhere in this issue of the **Federal Register**, FDA is announcing a stay of the effective date of the September 30, 1997, final rule for these products.[1]

ADDRESSES: References are available in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–827–4777, FAX 301–827–4787.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 30, 1997 (62 FR 51021), FDA published a final rule (to be codified at 21 CFR 801.437), under its authority in section 505(a) and (f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a) and (f)), requiring certain labeling statements on medical devices that contain or have packaging that contains natural rubber. This rule becomes effective on September 30, 1998. The agency issued this rule because medical devices composed of natural rubber may pose a significant health risk to some consumers and health care providers who are sensitized to natural latex proteins. FDA has received numerous reports about adverse effects related to reactions to natural latex proteins contained in medical devices, including 16 deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices. It is estimated that 5 to 17 percent of health care workers are sensitive to latex proteins (Refs. 1 through 5.)

The September 30, 1997, final rule (hereinafter referred to as the final rule) specifically requires that devices that contain natural rubber that is intended to contact or is likely to contact the health care worker or patient bear one or more of four labeling statements, depending on the type of natural rubber in the device and depending on whether the natural rubber is in the device itself or in its packaging. These statements are as follows: "This Product Contains Dry Natural Rubber."; "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."; "The Packaging of This Product Contains Dry Natural Rubber."; and "The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." The final rule also prohibits the use of the word "hypoallergenic" on devices that contain natural rubber latex.

In the June 24, 1996, proposed rule (61 FR 32618), FDA stated that it did not believe that the proposed rule would be a significant regulatory action as defined by Executive Order 12866, and certified under the Regulatory Flexibility Act (5 U.S.C. 601–602) that the rule would not have a significant economic impact on a substantial number of small entities. FDA stated that it believed the rule's proposed effective date 180 days after publication would allow manufacturers to exhaust their existing labeling supplies.

FDA received comments concerning the economic impact of the proposed rule stating that the requirement would have a major impact on multinational companies, costing at least $15,000 per device for labeling. Another comment stated that the agency underestimated the impact of the rule, as each manufacturer will need to draft, review, and relabel primary and secondary packages of hundreds, if not thousands of devices.

Based on FDA's information, the agency responded that it did not agree that the regulation would require the relabeling of hundreds or thousands of devices, and that agency estimates of relabeling costs were between $1,000 to $2,000 for each type of device. The agency also noted that the extended 1 year effective date should allow most manufacturers to exhaust their current labeling stock prior to the effective date of the regulation. On this basis, the agency stated that the final rule was not a significant regulatory action under the Executive Order, and certified that although a substantial number of small entities would be affected by the rule, the estimated $1,000 to $2,000 cost of implementing the final rule would not have a significant economic impact on those entities (62 FR 51021 at 51029).

On October 7, 1997, the Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration submitted a comment stating that the agency had not supplied data in the preamble to the final rule to support its cost estimates. The agency also received information from industry, subsequent to the issuance of the final rule, identifying additional products that would be subject to the final rule. On the basis of this information, FDA issued an amended economic impact analysis, including an IRFA, and offered opportunity for further comment before the implementation of the rule (63 FR

[1] Note: The stay of effective date referenced in this document was published at 63 FR 46174 on August 31, 1998.

29552). FDA stated that after consideration of these comments, FDA will decide whether to issue the rule on its current effective date, to stay the effective date of the final rule, and/or repropose the rule.

II. Comments to the Amended Economic Impact Analysis Statement

FDA received three comments to the amended economic analysis. Two comments were from the Health Industry Manufacturers Association (HIMA), and the other comment was from an in vitro diagnostic manufacturer.

The in vitro diagnostic manufacturer stated that health care professionals using in vitro products are trained in and expected to follow universal precautions for handling potential biohazards by wearing protective gloves. Accordingly, the comment maintained that health care professionals would not come into contact with latex in in vitro diagnostic products.

FDA believes that training in universal precautions will not prevent contact with the latex in in vitro diagnostic products for several reasons. Contact may occur under a variety of situations including failure to follow universal precautions, the absence of wearing protective gloves during the set up phase of testing, the retrieval of the products from storage or packing, or the disposal of products. While FDA does not believe that in vitro diagnostic products may be categorically excluded from the scope of this rule because of the universal precautions that may be undertaken, FDA believes that given the variety of product designs, there may be certain in vitro diagnostic products that may contain latex that are designed in such a manner as to preclude contact with the user. Currently, FDA is unaware of any products that are designed in such manner. If, however, there are such products, these products would not be subject to the final rule.

The in vitro diagnostic manufacturer and HIMA also commented that if in vitro diagnostic devices fell within the scope of the rule, they had not been included in the amended economic impact analysis. This omission was an oversight. FDA referred this comment and others described below to Eastern Research Group (ERG), Lexington, MA for analysis. ERG, after considering comments to the June 1, 1998, amended economic impact analysis, has issued an amended economic impact analysis which includes in vitro diagnostic products. The substantive parts of this analysis are reproduced in their entirety in Appendix 1 of this document.

HIMA submitted two comments. One comment requested an extension of the comment period to the economic impact analysis until July 31, 1998. Subsequently, HIMA submitted timely preliminary substantive comments.

FDA denied the request for an extension to the comment period. The public has now had two separate opportunities to comment on the economic impact of this rule. Interested persons had 90 days to respond to the economic impact statement in the proposed rule (61 FR 32618). FDA received only two comments related to the economic impact of the proposed rule. The amended economic impact analysis provided an additional opportunity for comment on the economic impact. FDA believes that 30 days is an adequate time to respond to the comments, particularly given the fact that this is the second opportunity for comment.

Moreover, FDA needed to notify the public whether the comments related to the costs of the rule would result in a stay of the rule, a reproposal of the rule, or whether FDA would retain the September 30, 1998, effective date. FDA needed sufficient time to analyze the comments and publish in the **Federal Register** a document notifying the public of its course of action before the September 30, 1998, effective date. FDA believes that allowing until July 31, 1998, for the submission of the second round of comments would not have allowed the agency adequate time to analyze comments and publish in the **Federal Register** a document in sufficient time before the September 30, 1998, effective date of the rule.

While HIMA's request for an extension was pending, HIMA submitted timely comments to FDA from several of its members. The fact that many HIMA members submitted responses within the comment period further demonstrates that the period of time was adequate for the submission of comments.

HIMA raised several substantive comments in its July 1, 1998, submission. These comments stated that HIMA was uncertain if the June 1, 1998, estimate included costs related to the following items or factors: New plates and film for each new label, purchasing or manufacturing new relabeled boxes and cartons, slow moving inventory or sterile products that cannot be repackaged, "specialty" products that are manufactured on an intermittent basis and kept in inventory for 2 to 3 years, and inability to place sticker labels on existing inventory for products that are sterile or carry several layers of packaging. HIMA also stated that one member had estimated the total cost per SKU to be $28,000.

These cost factors stated by HIMA were considered by ERG and FDA. Moreover, the figure reported to HIMA by one member for total cost per SKU does not affect the conclusions of FDA and ERG about the economic impact of this rule. The final ERG report, which is reproduced in Appendix 1, addresses these comments in further detail.

HIMA also stated that the agency did not comply with the Regulatory Flexibility Act in that it did not publish the initial regulatory flexibility analysis at the time of the publication of the proposed rulemaking. FDA does not agree. Regulatory flexibility analyses are only required if there is a significant impact on a substantial number of small entities. If an agency certifies there is no significant impact on a substantial number of small entities, the agency is not required to perform an initial or final regulatory flexibility analysis (5 U.S.C. 605(b)).

In both the proposed and final rules, FDA certified that under 5 U.S.C. 605(b) no such analysis was required (61 FR 32618, June 24, 1996; 62 FR 51021 at 51029, September 30, 1997). The first ERG analysis, as described in the **Federal Register** of June 1, 1998, and the subsequent ERG analysis, as described below, that responds to industry comments, supports FDA's conclusion that no regulatory flexibility analysis under 5 U.S.C. 603 and 604 is required. Even if such an analysis is required, FDA believes that the agency can satisfy the requirements under 5 U.S.C. 603 and 604 by issuing amended initial and final analyses after a proposed rule is issued.

III. Analysis of Impacts

During the course of reexamining the appropriateness of its certification that no regulatory flexibility analysis was required, FDA has already gathered sufficient information to perform a regulatory flexibility analysis. Accordingly, although FDA believes no regulatory flexibility analysis is required because there is no significant impact on a substantial number of small entities, FDA is providing a final regulatory flexibility analysis, as described below, in this amended economic impact analysis statement.

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (21 U.S.C. 1532) requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

The agency believes that this rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The purpose of this rule is to add labeling statements that will help ensure the safe and effective use by health care workers and patients of natural rubber devices. Potential benefits include early recognition of symptoms that could develop into severe latex allergies, and the prevention of severe allergic reactions and death that may occur if persons who are allergic to natural rubber inadvertently use natural rubber devices.

Based on other information referenced in this document, and on the analysis performed by the ERG, FDA is issuing this amended economic analysis statement. Since the rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure in any 1 year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act. The rule is not a significant regulatory action as defined by the Executive Order.

ERG amended its report based on comments received to the June 1, 1998, amended economic analysis statement. The final ERG analysis estimated that this rule will affect approximately 2,340 small businesses. Total annualized compliance costs for small businesses are estimated at $4.1 million, which represent 0.05 percent of revenues for small medical device manufacturers. This economic analysis indicates that this rule will not have a significant economic impact on a substantial number of small entities.

The final natural rubber latex labeling rule would require certain labeling statements on products that contain natural rubber latex. This rule would not invoke new recordkeeping and reporting requirements. Manufacturers of several types of products may include natural rubber latex and therefore be subject to this rule. Manufacturers of the products listed in Table 1–1 of the final ERG report will be subject to the final rule (63 FR 29552 at 29560).

Manufacturers of natural rubber latex devices need to employ certain professional skills to implement the new labeling requirements. Regulatory affairs staff will need to identify the need for a revised label, and coordinate the labeling review and revision processes with other departments such as marketing, medical and legal departments, and prepare the new labeling language. Graphic artists and label layout specialists will prepare the revised labels. Art work might be prepared by in-house or external staff. Once prepared, the revised label is normally sent to outside vendors who prepare new printing plates and perform final printing. The manufacturing personnel receive and review the final revised labeling, replace and discard old inventory, incorporate the new labels into the material control and inventory systems, and modify labeling and packaging equipment as necessary to accommodate new labels.

IV. Steps Taken To Minimize the Economic Impact on Small Entities and Regulatory Alternatives Examined

FDA has analyzed several alternatives and taken several steps to minimize the economic impact of this final rule on small entities. FDA did not receive any comments regarding proposed regulatory alternatives in response to the June 1, 1998, amended economic analysis statement. As discussed previously, FDA received a comment asking for clarification regarding the applicability of the final rule to in vitro diagnostic products, a request for an extension of the comment period, and several questions from HIMA relating to costs analysis issues. FDA's response to those comments is discussed in section II of this document.

A. Application of the Rule to Combination Products and Packaging

Although FDA did not receive any comments to the June 1, 1998, amended economic analysis statement proposing any regulatory alternatives, FDA did receive requests from industry, since publication of the final rule, for alternative approaches regarding the applicability of the rule. FDA considered both these alternatives, and modified the application of the rule under these requests in a manner that reduces the economic impact of the rule on industry, including small entities.

First, FDA received comments from industry requesting that the rule does not apply to combination products containing device components that had previously been regulated solely as drugs or biologics. In the **Federal Register** of May 6, 1998 (63 FR 24934), FDA issued a document stating that upon consideration of these comments and the need to provide a uniform labeling approach for all drug and biological products, including combination products, the agency did not intend to apply the final rule to combination products currently regulated as drugs or biologics, and instead intends to initiate a separate proceeding to propose rulemaking requirements for labeling statements on natural rubber-containing products regulated as drugs and biologics, including combination products, currently regulated under drug or biologic authorities.

Second, on June 5, 1998, HIMA submitted a citizen petition requesting a stay of the implementation of the final rule as it pertains to packaging (Ref. 6). As a basis for the stay, HIMA cited several grounds, including assertions that many manufacturers were confused as to the applicability of the rule to cold seal packaging, and, therefore, needed additional time to come into compliance with the new labeling requirements.

On June 19, 1998, FDA responded to this petition by stating it would stay the effective date of the latex labeling statements required by the final rule for cold-seal packaging for an additional 270 days from the September 30, 1998, effective date of the final rule. The stay of the effective date for the provisions of the September 30, 1997, final rule as they relate to cold-seal packaging is published elsewhere in this issue of the **Federal Register**.[2] FDA is not granting a stay of the effective date for all packaging because of the evidence of serious risks latex poses for certain individuals and the need to inform those individuals of the presence of natural rubber latex in devices (Ref. 7).

B. Voluntary Compliance

FDA could have issued guidance stating FDA considered statements about the presence of natural rubber necessary to comply with existing general statutory and regulatory prohibitions against false and misleading labeling (section 505(a) of the act), and failure to provide adequate

[2] Note: The stay of effective date referenced in this document was published at 63 FR 46174 on August 31, 1998.

directions for use (section 505(f)). Given the significant health risks associated with natural rubber products, FDA does not believe that existing general statutory labeling authority and regulations provide adequate protection to ensure that health care workers and patients are warned about the risks associated with natural rubber.

Without the final regulation, manufacturers may not provide any information at all. The ERG report and FDA's own experience indicate that some manufacturers never voluntarily revise their labeling. Even if it could be assumed that all manufacturers would voluntarily provide some labeling information about the presence of natural rubber, such information is likely to be presented in a variety of ways that may confuse consumers and limit the effectiveness of the natural rubber statement. FDA believes that the provision of consistent, accurate information to consumers is critical. FDA believes that this regulation, which provides accurate, consistent information in a standardized manner, will assure that the safety information is communicated effectively to the public.

C. Implementation Periods

FDA considered various implementation periods for the effective date after the issuance of the final rule. The June 24, 1996, proposed rule proposed an effective date 6 months after the publication of the final rule. The final rule has reduced the impact on small businesses by extending the effective date to 1 year after issuance of the final rule for all products, except those containing natural rubber latex solely in cold-seal type packaging. For those products the agency is providing, for the reasons stated previously, an additional 270 days to comply with the rule.

Based on the ERG report figures, the total industry cost of compliance for this rule with a 1-year implementation period is $64.1 million. This figure may be somewhat higher than actual costs because of the extension for compliance granted to cold seal packaged products, however FDA did not reduce cost estimates related to this variable. The total annualized costs are calculated at $9.1 million per year. The costs for a 6-month effective date are 26 percent greater than a 1-year effective date. Allowing a 24-month implementation date would reduce costs by 40 percent.

FDA rejected the 6-month implementation period and extended the implementation period to 1 year to allow manufacturers of products containing natural rubber latex, including small businesses, to reduce costs by depleting existing inventories and coordinating this labeling change with other planned labeling changes. Although costs could further be reduced by allowing a 24-month implementation period, FDA believes that the public need for this information about devices that pose serious risks justifies rejecting this alternative.

D. Exempting Small Businesses

FDA has considered the option of exempting small businesses from the final regulation. The ERG report estimates that approximately 83 percent of the manufacturers of natural rubber latex products are small businesses. FDA believes that given that the large majority of manufacturers of products containing natural rubber latex are small businesses, and given the risks associated with these devices, exempting small businesses from this regulation would result in a significant decrease of consumer protection. Accordingly, FDA does not believe that small businesses should be exempt from this regulation.

E. Allowance of Supplementary Labeling

FDA could have chosen a regulatory alternative that would require that all labeling be directly printed on the existing packaging and labeling. Such a regulatory provision would decrease the possibility that the required statement would become dislodged during distribution. Instead, the final rule allows the use of supplementary labeling (stickers) to provide the required labeling information. As noted in the ERG report, this will allow a number of firms, including small businesses, to reduce costs by avoiding extensive repackaging of existing product inventory that will not be sold prior to the end of the regulatory implementation period. FDA decided to include this option in the final rule.

F. Requiring a Labeling Statement on Only One Level of Labeling

Under the provisions of the final rule, FDA estimates that most devices covered under the final rule will bear the required natural rubber statement on two or three levels of labeling. FDA considered requiring labeling statements on only one level of labeling. This alternative was rejected because of the importance of the information contained in the required labeling statements. Users may not have the necessary opportunity to read the statement if it is included only on some levels of labeling. For some products, especially those with multiple users, some labeling may be discarded prior to use by subsequent consumers. The inclusion of the statement on each level of labeling increases the likelihood that consumers will be aware of the risks posed by the natural rubber in the product.

V. 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.

1. Kibby, T., and M. Akl, "Prevalence of Latex Sensitization in a Hospital Employee Population," *Annals of Allergy, Asthma and Immunology*, 78:41–44, 1997.

2. Kaczmarek, R. G., B. G. Silverman, T. P. Gross, et al., "Prevalence of Latex-specific IgE Antibodies in Hospital Personnel," *Annals of Allergy, Asthma and Immunology*, 76:51–56, 1996.

3. Arellano, R., J. Bradley, and G. Sussman, "Prevalence of Latex Sensitization Among Hospital Employees Occupationally Exposed to Latex Gloves," *Anesthesiology*, 77:905–908, 1992.

4. Lagier, F., D. Vervloet, I. Lhernet, et al., "Prevalence of Latex Allergy in Operating Room Nurses," *Journal of Allergy and Clinical Immunology*, 90:319–322, 1992.

5. Yassin, M., M. Lierl, T. Fisher, et al., "Latex Allergy in Hospital Employees," *Annals of Allergy*, 72:245–249, 1994.

6. June 5, 1998, HIMA citizen petition requesting a stay of the implementation of the final rule as it pertains to packaging.

7. June 19, 1998, FDA response to HIMA citizen petition requesting stay of the implementation of the final rule as it pertains to packaging.

VI. Public Outreach

FDA has conducted extensive public outreach relating to the final rule to small businesses. Interactions with the public on issues relating to this rule are discussed in detail in the amended economic analysis statement published in the **Federal Register** of June 1, 1998 (63 FR 29552, at 29553 and 29554).

Dated: September 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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APPENDIX 1

FINAL REPORT

ECONOMIC IMPACT ANALYSIS FOR REGULATIONS REQUIRING LABELS FOR MEDICAL DEVICES CONTAINING NATURAL RUBBER LATEX (NRL)

July 31, 1998

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EXECUTIVE SUMMARY

FDA issued a final rule on September 30, 1997, requiring that label statements appear on medical devices and medical device packaging that contain natural rubber that contacts humans. The final rule is effective one year after publication (September 30, 1998), although manufacturers of certain natural rubber-containing products (i.e., those that use "cold-seal packaging") are granted an additional 270 days to come into compliance. Under contract to FDA, ERG examined the cost and small business impacts of the regulation.

ERG estimated that the natural rubber labeling rule will affect over 40 FDA-defined device categories as well as in-vitro diagnostic devices, and an estimated 19,600 models of medical devices. ERG estimated the total industry cost of compliance at $64.1 million. Annualized over a ten year time horizon, the total costs are calculated at $9.1 million per year. Total compliance costs for small businesses are estimated at $28.6 million, and are annualized at $4.1 million per year. These costs represent 0.05 percent of revenues for small medical device manufacturers in the industry.

ERG also quantified the costs of alternative versions of the regulation in which industry is allowed a shorter (6 months) and a longer (24 months) implementation period than the base case (12 months). Under the 6-month alternative, the annualized costs of compliance are $11.5 million, an increase in costs of 25.9 percent from the base case. Under the 24-month alternative, the annualized costs are $5.5 million, a reduction of 39.5 percent from the base case. ERG also reviewed the cost implications (but did not quantify the effects) of an alternative regulatory provision under which affected businesses would not be allowed to use stickers to come into compliance. This option was judged to increase the size of inventory losses, especially for small businesses.

Response to Industry Comments

on Earlier Version of Economic Analysis

FDA forwarded two comments on the earlier version of the economic impact analysis for the regulation requiring labeling statements for medical devices containing natural rubber latex. One comment was from a trade organization, the Health Industry Manufacturing Association (HIMA), and one was from an in vitro diagnostics manufacturer. Both comments stated that the earlier economic impact analysis did not include the costs for in vitro diagnostic products. ERG has now included estimates of the costs of compliance with this regulation for in vitro diagnostic manufacturers in Tables 1-1 and 1-2, based on information of the numbers of manufacturers and numbers of products provided to ERG by FDA.

The HIMA comment raised several issues, as reviewed below. This discussion describes where explicit responses were made to comments in the following report. In other cases, ERG made no explicit reference to the comment.

HIMA comments that it is unclear whether ERG's artwork costs per device model (i.e., per shelf-keeping unit or SKU) include the costs for new printing plates, film, and artist's time. HIMA also commented that one of their members estimated the costs of plates alone to be $1,500 per SKU.

The earlier draft stated (see Section 1.8.2) that printing plates, film, and the artist's time (to design new labels) were included in the cost estimate. The final report also mentions that all of these elements are included.

The cost of film is a relatively minor component of the artwork costs and, as the HIMA comment indicates, the principal issue is the cost of the printing plates. Printing plate costs, however, cannot be definitively estimated without defining a number of plate specifications, such as the size, number of colors, number of labels to be printed, and other characteristics. Across the universe of medical devices, no average specifications can be reasonably defined. The data collected in ERG's contacts to manufacturers and labeling companies indicated that printing plate costs can vary from $30 to $500. Because 3 new plates might be required for 3 levels of labeling, the $1,500 figure is credible, but at the high end of the likely range of

costs. Smaller expenditures appear much more common. In any case, because of the uncertainty about the distribution of artwork costs, ERG raised the artwork estimate from the earlier version of the analysis from $600 to $1,000 per SKU.

HIMA comments that it is not clear whether the estimates include the cost of purchasing and manufacturing new relabeled boxes and cartons.

Because all devices must be packaged and boxed in any case, the relevant social costs are the inventory losses for unusable labels and packaging and the cost of designing and preparing new labeling. These costs have been included.

If HIMA's comment is referring to costs of reformatting the labeling and packaging configuration because the labeling statement will not fit on the existing design, ERG's discussions with manufacturers suggest that label reformatting will be an infrequent occurrence. Nevertheless, ERG's estimates assume that manufacturers will reformat 10 percent of the device labels. Thus, ERG has addressed the costs of preparing newly relabeled boxes and cartons.

HIMA comments that it is unclear whether the analysis considered repackaging costs for slow moving inventory or the fact that some materials cannot be repackaged at all because they will not withstand resterilization.

ERG's costs include labor and equipment leasing costs for sticker application to existing packaged product inventories, i.e., slow moving product inventories. For large companies, for example, which actually appear to have the largest compliance problems, ERG allowed for a substantial group of temporary laborers (16 workers) to unpackage devices, apply stickers, and repackage devices.

While not all manufacturers could be surveyed, ERG did not encounter any exceptional compliance difficulties involving sterile products, despite contacts to several manufacturers of sterile products. The most costly compliance scenario identified was that involving the extensive use of temporary labor to unpackage and repackage products. In order for the situation mentioned by HIMA to occur, a company's product must have a highly specific set of characteristics, i.e., slow moving from inventory, sterile, and incapable of being resterilized. In this report ERG stated (page 1-18, second paragraph) that its evidence indicates that more significant inventory losses were a hypothetical possibility but, based on manufacturers' comments, ERG judged that they would occur with negligible frequency.

HIMA notes that some specialty products are manufactured on an intermittent basis and kept in inventory for 2 to 3 years, and that these products might be difficult or costly to relabel.

In its contacts to manufacturers, ERG did not find evidence that products held for long periods in inventory could not be relabeled. ERG's contacts included firms manufacturing thousands of diverse specialty orthopedic products, i.e., firms with relatively large inventory management problems. These firms stated that the regulation had no measurable impact on their operations. Again, the situation cited by HIMA is a hypothetical possibility but ERG considered its occurrence to be extremely infrequent.

HIMA comments that one of its members estimated the cost of compliance at $28,000 per SKU, a figure much higher than ERG's estimates.

As noted in this report, ERG's estimates vary significantly with the size of the company. The figure reported by HIMA was consistent with the costs reported to ERG by one very large international device manufacturer. ERG's estimates reflect the expectation that larger manufacturers will incur higher compliance costs than small manufacturers because they have larger inventories that might require relabeling, more complex administrative and manufacturing systems for managing label changes, and a greater likelihood that they will incur costs for translating labels for international device sales. HIMA indicated to ERG that the company incurring the high per-SKU compliance cost was, in fact, a large medical device manufacturer. The experience of the company mentioned by HIMA as well as by the commentator to the June 24, 1996 proposed rule, who estimated cost at $15,000 per device for multinational companies, are, therefore, consistent with the range of cost figures upon which ERG based its estimates for large companies and does not have bearing on the impacts for small businesses.

HIMA notes that placing stickers on the immediate package might not be feasible because the package is enclosed in an outer package and, in some cases, sterilized.

As mentioned, ERG did not encounter these difficult compliance situations despite numerous contacts to manufacturers, including manufacturers of sterile products. Those manufacturers ERG spoke with appeared to have some options available to mitigate the worst potential compliance costs and, in some cases, were making plans to place stickers on affected products.

SECTION ONE

STUDY PURPOSE AND METHODOLOGY

The purpose of this rule is to require a labeling statement on medical devices and packaging containing latex. This is because medical devices composed of natural rubber may pose a significant health risk to some consumers and health care providers who are sensitized to natural latex proteins. FDA has received numerous reports of adverse effects related to reactions to natural latex proteins contained in medical devices, including deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices.

1.1 Overview of Study Methodology

FDA published a final rule on September 30, 1997 requiring labeling statements on products that have natural rubber-containing medical device components that might contact humans. The labeling must state: "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." Similar statements are required for products containing dry natural rubber or whose packaging has natural rubber or dry natural rubber.

ERG estimated the costs of compliance and the small business impacts of the regulation. To develop the cost estimates, ERG developed a study methodology encompassing the following topics:

- Estimating the number of labels revised per medical device
- Estimating the number of devices affected

- Modeling medical device labeling revisions
- Forecasting medical device manufacturer compliance responses and costs
- Calculating with a formal model medical device relabeling costs

1.2 Number of Labels Affected per Medical Device

The FDA-mandated labeling statement is required on all device labels, including the principal display panel of the device packaging, the outside package, container, or wrapper, and the immediate device package, container, or wrapper. The statement must also appear on promotional materials. Where applicable, package inserts and Instructions for Use pamphlets must also be revised. While some labeling also includes physician operating manuals, technician or maintenance manuals, or other lengthy labeling, the natural rubber-containing devices generally do not include these items. ERG interpreted the regulation not to require a statement on shipping cartons.

FDA surveyed its medical device reviewers for the affected product categories and solicited information on the number of labels included in product shipments. FDA's reviewers estimated for most product categories that two to three device labels would be affected. Based on these inputs, and to ensure that costs are not underestimated, ERG used an estimate of 3 levels of labeling per device in developing the cost estimates.[1]

[1] The three levels of labeling should not be interpreted as three labels per medical device. Based on discussions with medical device manufacturers, ERG determined that most of the natural rubber-containing medical devices are not sold individually but rather in cases consisting of numerous units. ERG assumed that a representative case (third level packaging) has four boxes (second level packaging) each of which contains ten individually wrapped (primary packaging) units of the given medical device. Thus, the number of labels per case is 45 in the cost computations.

1.3 Number of Medical Devices Categories and Models Affected

FDA identified 43 medical device categories that are addressed by the regulation. FDA device reviewers also estimated the percentage of devices in each category that are covered by the regulation. Additionally, an estimated 15 percent of in vitro diagnostic kits (IVDs), which are classified in a number of medical device categories, are covered by the regulation (FDA, Division of Clinical Laboratory Devices, 1998). Table 1-1 lists the device categories, the number of listed devices per category (i.e., the number of devices manufacturers are authorized to offer for sale), and the percentage share of devices within each category that contains natural rubber components that contact humans. The regulated devices include 5 categories of tracheal tubes, 4 of condoms, and 3 of catheters.

Within each of the medical device categories, it was also necessary to estimate the number of device models that are distinctly labeled. Manufacturers separately prepare and print each set of labels and therefore their labeling costs will be a multiple of the number of labels they revise. To address this point, ERG collected sales catalogues for approximately one-half of the medical device categories covered. The catalogues provided sufficient information to support estimates of the number of distinctly labeled models. ERG estimated that on average manufacturers sold 14 models of each of the listed medical devices. In developing these estimates, ERG was cognizant both of the number of different models sold (number of sizes, variety of styles), and of the possibility that numerous similar models will be packaged with the same base set of labeling. Manufacturers often use a production line labeling machine or other method to print a distinguishing model number on different models that are otherwise shipped with identical labeling. Similarly, manufacturers often prepare Instructions for Use and other labels to be applicable for multiple device models. In such cases, a manufacturer that sells ten models of a given device might only be changing one set of labeling. For IVDs, a separate estimate was made that there is typically only 1 model per listed device. ERG's estimates of the number of models affected are displayed in Table 1-2.

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TABLE 1–1.—FDA ESTIMATES OF THE MEDICAL DEVICE CATEGORIES AFFECTED AND DEVICE LISTINGS PER CATEGORY

Device product code	Product	Percent containing natural rubber [a]	Levels of labeling	Number of registrations per category	Number of listings per category [b]
BSJ	Mask, gas, anesthetic	50	1	28	28
BSK	Cuff, tracheal tube, inflatable	1	*3*	7	7
BSR	Stylet, tracheal tube	10	3	13	13
BSY	Catheters, suction, tracheobronchial	10	1	32	32
BTQ	Airway, nasopharyngeal	20	2	13	13
BTR	Tracheal tube (w/wo connector)	5	2	30	30
CAT	Cannula, nasal, oxygen	1	2	30	30
CBH	Device, fixation, tracheal tube	50	2	16	16
CBI	Tracheal/Bronchial tube	5	2	5	5
DWL	Stocking, medical support	5	1	15	15
DZB	Headgear, extraoral, orthodontic	20	2	16	16
ECI	Band, elastic, orthodontic	10	1	27	27
EMX	Balloon, epistaxis	50	3	16	16
EXJ	Condoms, urosheath type	*100*	*3*	12	*13*
EYC	Catheter, upper urinary tract	100	2	1	1
EYR	Tourniquet, gastro-urology	20	1	1	1
FCD	Kit, barium, enema, disposable	40	3	4	4
FCE	Kit, enema (for cleaning purposes)	40	3	19	19
FGD	Catheter, retention, barium enema with bag	40	3	2	2
FMC	Gloves	*100*	*3*	110	*135*
FMF	Piston syringe	95	2	77	77
FPF	Bottle, hot/cold, water	80	3	12	12
FQM	Elastic, bandage	10	1	89	89
FXX	Face, mask, surgical	100	1	56	56
GAX	Tourniquet, nonpneumatic	20	1	26	26
HDW	Diaphragm, contraceptive	80	3	3	3
HIS	Condoms	*100*	*3*	44	*48*
HOY	Ophthalmic eye shields	100	2	44	44
ILG	Stocking, elastic	5	1	7	7
INP	Tips and pads, cane, crutch, and walker	80	1	37	37
JOH	Tube, tracheostomy and tube cuff	1	*3*	9	9
JOW	Sleeve, limb, compressible	100	2	26	26
KCY	Tourniquet, pneumatic	20	1	12	12
KGO	Gloves, surgeons	*100*	*3*	54	*66*
KME	Bedding, disposable, medical	5	1	38	38
KMO	Binder, elastic	5	1	5	5
KNT	Tubes, gastrointestinal (and accessories)	5	3	40	40
KYZ	Irrigating syringe	90	2	61	61
LCG	Intestinal splinting tubes	50	3	1	1
LLJ	Condoms, organ protection	*100*	*3*	1	*1*
LTZ	Condoms, with nonoxynol-9	*100*	*3*	19	*21*
LYY	Gloves, latex	*100*	*3*	319	*392*
MBU	Condoms, intravaginal pouch	*100*	*3*	5	*5*
	In vitro diagnostics	15	*3*	1,529	17,000
	Total	NA	NA	2,911	18,499
	Average	48.59	2.16	32.14	NA

Source: FDA, Center for Devices and Radiological Health, 1998, FDA, Division of Clinical Laboratory Devices, 1998, and FDA In-Vitro Diagnostic Device Branch, 1998.

[a] The numbers in italic are ERG estimates. ERG assumed that 100 percent of products included natural rubber that would contact humans in the absence of survey information on the product category.

[b] For condom and glove categories, ERG did not have complete listing data from FDA and estimated the number of listings based on the number of registered establishments.

TABLE 1--2.—ERG ESTIMATES OF THE NUMBER OF MEDICAL DEVICE MODELS AFFECTED

Product	Number of listings per category [a]	Number of models per listing [b]	Percent containing natural rubber [c]	Total models to be changed, by category
Mask, gas, anesthetic	28	5	50	70
Cuff, tracheal tube, inflatable	7	2	1	1
Stylet, tracheal tube	13	4	10	6
Catheters, suction, tracheobronchial	32	6	10	20
Airway, nasopharyngeal	13	3	20	8
Tracheal tube (w/wo connector)	30	28	5	42
Cannula, nasal, oxygen	30	1	1	1
Device, fixation, tracheal tube	16	19	50	152
Tracheal/Bronchial tube	5	28	5	7
Stocking, medical support	15	*14*	5	11
Headgear, extraoral, orthodontic	16	*14*	20	45
Band, elastic, orthodontic	27	*14*	10	38
Balloon, epistaxis	16	2	50	16
Condoms, urosheath type	*13*	*14*	*100*	182
Catheter, upper urinary tract	1	52	100	52
Tourniquet, gastro-urology	1	*14*	20	3
Kit, barium, enema, disposable	4	13	40	21
Kit, enema (for cleaning purposes)	19	4	40	31
Catheter, retention, barium enema with bag	2	2	40	2
Gloves	*135*	*14*	*100*	1,890
Piston syringe	77	*14*	95	1,025
Bottle, hot/cold, water	12	*14*	80	135
Elastic, bandage	89	*14*	10	125
Face, mask, surgical	56	23	100	1,288
Tourniquet, nonpneumatic	26	*14*	20	73
Diaphragm, contraceptive	3	*14*	80	34
Condoms	*48*	*14*	*100*	672
Ophthalmic eye shields	44	*5*	100	220
Stocking, elastic	*7*	*14*	5	5
Tips and pads, cane, crutch, and walker	37	*14*	80	415
Tube, tracheostomy and tube cuff	9	30	1	3
Sleeve, limb, compressible	26	*14*	100	364
Tourniquet, pneumatic	12	*14*	20	34
Gloves, surgeons	*66*	*14*	*100*	924
Bedding, disposable, medical	38	*14*	5	27
Binder, elastic	5	*14*	5	4
Tubes, gastrointestinal (and accessories)	40	*14*	5	28
Irrigating syringe	61	22	90	1,208
Intestinal splinting tubes	1	*14*	50	7
Condoms, organ protection	*1*	14	*100*	14
Condoms, with nonoxynol-9	*21*	*14*	*100*	294
Gloves, latex	*392*	*14*	*100*	5,488
Condoms, intravaginal pouch	*5*	*14*	*100*	70
In vitro diagnostics	17,000	1	15	2,550
Total	18,499	NA	NA	17,605

Source: FDA, Center for Devices and Radiological Health, 1998, FDA, Division of Clinical Laboratory Devices, 1998, In-Vitro Diagnostic Device Branch, 1998, and ERG estimates.

[a] For Condom and glove categories, ERG did not have complete listing data from FDA and estimated the number of listings based on the number of registered establishments. These estimates are presented in italics.

[b] The numbers in italics are based on the average number of models per listing, as estimated from ERG's review of medical device product catalogues.

[c] The numbers in italics are ERG estimates. ERG assumed 100% natural rubber content in the absence of survey information on the product category.

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For some medical device categories, ERG did not have adequate access to sales catalogues or other information on the number of models per FDA listing of affected devices. ERG applied the estimate of 14 models per listing to those categories where other data were unavailable.

Thus, ERG estimated that approximately 17,600 medical device models are affected by the regulation. The largest groups are estimated to be latex gloves (over 8,000 models over multiple glove categories), IVDs (2,550 models), and condoms (approximately 1,000 models over several condom categories).

ERG interpreted the FDA rule also to apply to packaging materials that include natural rubber constituents. Such materials are used in cold seal packaging, which is a common method of sealing for sterile packages, such as individually wrapped elastic bandages and gauze. Based on discussions with affected manufacturers, ERG estimated that approximately 2,000 medical device models are sold in cold seal packaging. Combining the number of affected medical devices (approximately 17,600) with those sold in natural rubber-containing packaging (approximately 2,000), ERG estimated that labeling for a total of approximately 19,600 medical device models is regulated under this rule.

1.4 Modeling the Label Revision Process at Medical Device Companies

Most medical device manufacturers prepare and periodically revise numerous labels. The extensive standardization of the label preparation routine allowed ERG to forecast the costs that companies will incur to respond to the natural rubber labeling rule. The principal components of the labeling preparation process are:

- Regulatory affairs staff identify the need for a revised label. This staff typically coordinates the labeling review and revision process with other departments

(including marketing, medical, and legal departments) and prepares the new labeling language.

- Graphic artists and label layout specialists prepare revised labels. The artwork might be prepared by in-house or external staff. Once completed, the revised label is normally sent to outside vendors who prepare new printing plates and perform final printing.

- The manufacturing side of the company receives and reviews the final revised labels. The manufacturing operation incurs costs to:

  - Replace and discard inventory of old labels
  - Incorporate the new labels into the material control and inventory systems
  - Modify labeling and packaging equipment as necessary to accommodate new labels

Each of these components of the labeling revision process is modeled in the cost analysis, as described in Sections 1.6 and 1.7.

1.5 Predicting Manufacturer Compliance Responses and Associated Costs

Medical device companies will incur costs according to their selected method of achieving compliance and the circumstances in which they must prepare for labeling compliance. The compliance responses judged relevant to this rulemaking are grouped into four categories:

- Modify labels immediately
- Apply temporary additional labels, such as sticker labels, and modify labels permanently at a later date
- Incorporate this new labeling requirement in the course of other labeling revisions underway or planned
- No revisions needed, existing statement on label is in compliance.

Manufacturers in the first category will develop revised labels and incorporate them into their production and packaging processes during the implementation year. The second group will also

incur relabeling costs but for various reasons cannot implement new labels into their processes in time to meet the implementation deadline. Thus, these manufacturers will also need to apply temporary labels, most commonly sticker labels, to meet the FDA requirements. The third group of manufacturers is assumed not to incur any compliance costs specific to the natural rubber labeling rule because they are revising labels for other reasons in any case. Finally, the last group of manufacturers had already implemented a labeling statement that meets the FDA requirements based on previous discussions with the agency.

Table 1-3 presents the four options and the estimates of the frequency with which they are forecast to be used. The forecasts are based on discussions with the manufacturers contacted for this study and ERG estimates of the likely patterns of compliance. (These forecasts of manufacturer responses to the regulation are varied when alternative versions of the regulation are considered in Section 2.3.)

As the table notes, ERG judged that some manufacturers will need to change their labeling or packaging configurations to accommodate the labeling statement. For example, manufacturers could find that they need to use larger labels, or that they need to increase carton size to provide needed label space. (Two of the manufacturers contacted for this study mentioned problems fitting the statement onto their labels; other manufacturers did not express concern about available labeling area or other problems with their labeling configurations). On the basis of these contacts, ERG judged that manufacturers would need to reformat or otherwise revise labeling and packaging configurations for 10 percent of the affected medical device models.

1.6 Incorporation of the Natural Rubber Labeling Statement Costs into Voluntary Relabeling Activities

Medical device manufacturers sometimes revise product labeling for reasons other than FDA regulatory requirements, such as changes in foreign labeling regulations, expectations of marketing advantages from relabeling, the desire to publicize device improvements and

Table 1-3

Forecast of Compliance Categories by Company Size

Category	For Natural Rubber-Containing Devices — Company Size: Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging — All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	35%	40%	45%	75%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	30%	20%	10%	20%
Category 3: Incorporation of labeling revision into changes otherwise being made	10%	15%	20%	0%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

modifications in labeling, and expectations of greater clarity and/or reduced product liability exposure. If a medical device company is revising labels in any case, the regulatory affairs staff can also incorporate new regulatory requirements (such as the natural rubber statement language) at a negligible incremental cost. Therefore, ERG assumed that manufacturers of models that are being relabeled anyway will not incur any regulatory cost.

The number of medical devices likely to be relabeled voluntarily by medical device companies over the year's implementation time granted with this rule is significant, although no statistics are available on this subject. ERG is also aware, however, that some manufacturers almost never voluntarily revise their labeling. These companies might frequently introduce new versions of their devices and, therefore, are unwilling to revise labeling that will soon be superseded in any case.

In the case of the natural rubber labeling statement, the timing of the rule nearly coincides with the European Union (EU) deadline of June 1998 for medical device companies to satisfy EU language and label-marking requirements. In discussing the EU deadline with medical device companies in early 1998, some confirmed that they were actively relabeling products to meet the EU requirements and were incorporating the FDA requirement as they went. Others, however, stated that they had satisfied the EU requirements well before September 1997 and, therefore, the timing of FDA's regulation did not ease their relabeling task.

The coincidental timing of the FDA natural rubber rule and the EU rule is of potential value only to those medical device companies marketing devices to Europe. Based on a survey of 223 medical device manufacturers in Medical Device and Diagnostics magazine (MD&DI), approximately 50 percent of manufacturers overall sell their devices in Europe (Bethune, 1997). An estimated 90 percent of large manufacturers sell to the EU.

ERG made the conservative judgment (as shown in Table 1-3) that, despite the potential overlap of the FDA and EU requirements, only approximately 10 to 20 percent of medical device

models (for small to large companies) would be voluntarily relabeled within the implementation period of this regulation. The estimate reflects their relative participation levels for small to large companies in foreign exporting of medical devices.

ERG also considered the possibility that manufacturers are able to incorporate other labeling changes while incorporating the natural rubber labeling statement, thereby forestalling additional relabeling in future years. For example, manufacturers could simultaneously enhance the labeling presentation of their cartons and containers, incorporate non-U.S. labeling requirements besides those originating from the EU, and incorporate the most up-to-date information into their IFU pamphlets. Nevertheless, the rapid technological obsolescence of many devices and the limited value of labeling as a marketing tool for medical devices (especially for devices that are not sold over-the-counter) means that companies gain relatively little from such labeling enhancements. Therefore, ERG did not adjust the costs to recognize other potential benefits of the relabeling activities.

1.7 The Formal Structure of the Labeling Revision Model

The labeling revision costs per medical device model are the sum of the following cost elements:

$$TC_i = (RA)_i + (ART) + (MC)_i + (IIL)_i + (IL)_i + (TR)_i + (SL)_i + (LF)_i$$

where:

i = Size of company (small, medium, and large)

TC = Total relabeling costs per device model

RA = Costs incurred by the regulatory affairs department in modifying labeling content

ART= Artwork costs (cost for graphic art work, printing plates, and other supplies)

MC = Costs of preparing for new printing runs and incorporating the new labeling into manufacturing operations

IIL = Irreducible inventory loss that occurs for all labeling changes due to company needs for a margin of error in labeling inventories

IL = Excess labeling inventory losses that result from the need to change labeling on a shorter cycle than originally envisioned by a company, due to regulatory implementation deadlines

TR = Cost of translating the labeling statement into 12 languages

SL = Cost of purchasing and applying supplementary labels

LF = Additional cost of redesigning labeling and/or packaging when labeling space limitations will not allowing the labeling statement to be included in the currently formatted labels.

ERG's estimates of the unit costs incurred at each stage of the relabeling process by small, medium, and large manufacturers are incorporated into the relabeling model. These estimates and assumptions are presented in the next section.

1.8 Medical Device Relabeling Model Assumptions

The description of model assumptions (See Table 1-4) is organized as follows:

- Regulatory affairs
- Artwork costs
- Manufacturing and printing costs
- Inventory costs
  - Irreducible inventory costs
  - Excess inventory losses
- Translation costs
- Supplementary labeling
- Major labeling format changes

Table 1-4

Medical Device Model Assumptions and Parameters

Element	Components involved	Company Size		
		Small	Medium	Large
Regulatory Affairs (RA)	Labor hours per model for a minor change	6	12	24
	Regulatory affairs labor wage rate ($ per hour)	$33.66	$33.66	$33.66
	Subtract 10% from labor cost for blanket approval savings	90%	90%	90%
Artwork (ART)	Artwork and graphics costs per model	$1,000	$1,000	$1,000
Manufacturing (MC)	Hours per model to incorporate new label into process	4	8	20
	Production worker wage rate ($ per hour)	$18.06	$18.06	$18.06
Irreducible Minimum Inventory Loss (IIL)	All labeling and packaging losses	$500	$2,000	$5,000
Excess Inventory Loss (IL)	All labeling and packaging levels	$750	$3,000	$7,500
	Percentage of models where excess inventory losses occur (applies to models where stickers are not used)	5%	5%	5%
	Average excess inventory loss per model	$38	$150	$375
Translation (TR)	Cost of translating into 12 languages ($50 per language)	$600	$600	$600
	Percentage of companies that incur translation costs	30%	40%	60%
	Average translation cost per company	$180	$240	$360
Supplemental Labels (SLBL)	*Use of non-standard labels (stickers)*			
	6-week lease cost of pressure sensitive labeler (includes parts, labor, adjustment costs)	$5,400	$5,400	$10,800
	Number of production workers required for attaching labels	2	4	16
	Total cost of labor for manual attachment of labels assuming the process will last 6 weeks	$8,669	$17,338	$69,350
	Number of cases produced per model/yr per establishment size	6,000	20,000	60,000
	Total leasing and labor cost per model	$1,005	$1,624	$5,725
	Cost of a pressure sensitive label	$0.0200	$0.0100	$0.0050
Major Labeling Format Changes (LF)	*For all label text area changes*			
	Additional hours of regulatory affairs input per model	3	6	12
	Regulatory affairs labor wage rate ($ per hour)	$33.66	$33.66	$33.66
	Additional artwork cost per model	$600	$600	$600
	Additional manufacturing hours to revise packaging/labeling for	8	16	40
	Production worker wage rate ($ per hour)	$18.06	$18.06	$18.06

1.8.1 Regulatory Affairs

This cost element addresses the labor costs needed to analyze new or revised regulatory requirements, prepare labeling changes, and obtain signoffs on the labeling changes from all relevant departments (not including manufacturing areas, such as materials control and quality control). Labor costs are those costs generated by regulatory affairs professionals and labeling department personnel (if separate), including editors and proofreaders. This category also covers professionals from other departments (including those responsible for legal affairs, medical issues, and marketing) that review and sign off on labeling revisions.

Regulatory affairs costs vary with the size of the manufacturer and the complexity and scope of the labeling change. Because the required labeling statement in this case is so short (one sentence), with the exact language provided by FDA, regulatory affairs staff will require relatively little time to discuss the necessary labeling language. Nevertheless, the regulatory affairs staff will need to (1) discuss the incorporation of the required language into other or additional statements it provides on its products, (2) consider the exact placement of the statement on each label, and (3) add the statement into any advertising and promotional material that is in preparation for release after the implementation date of this rule.

On average, companies are estimated to spend 6 to 24 hours per model on this label change. Larger companies expend more hours per model due primarily to the higher number of reviews and signoffs required for a labeling change.

No separate costs are estimated for making changes to promotional materials associated with natural-rubber containing medical devices. Advertising copy is assumed to be revised frequently and, therefore, is likely to be revised and updated during the 12-month implementation period. The new natural rubber statement would be incorporated with essentially no incremental costs during revisions. To the limited extent to which manufacturers might have advertising or

promotional materials that are not frequently revised, ERG assumed that the hours estimate is adequate to address the additional changes in promotional materials.

1.8.2 Artwork Costs

Manufacturers incur costs for the labor of graphic artists, the purchasing of graphic art supplies, film supplies (to produce camera-ready copies of revised labels), new printing plates, and the printing of sample labels. In general, the variables that influence artwork costs include the complexity of the labeling revision, the potential for conflict with marketing or other labeling considerations, and the design complexity. In this case, graphic artists will need little time to add the natural rubber statement, but will still need to access the computer graphics file for each label and fit the statement into the available area of the existing labels. Variables that influence the cost of new printing plates include the type of printing process used, the number of labels to be created, and the design complexity (especially the number of colors) of the original labeling. Given the extreme range of variability across the affected medical device manufacturers, an exact specification of the average artwork and related printing costs cannot be defined.

To address this cost element, artwork costs were estimated at $1,000 per model (across all size classes), with the costs covering all three levels of labeling. These costs were estimated to be representative artwork costs for all medical device manufacturers, whether they perform the relabeling in house or using outside vendors, based on the range of estimates provided by companies and by printing or labeling vendors.

No separate artwork costs are assumed for revision of advertising copy and other promotional materials. As noted, ERG assumed that these materials are revised frequently and that the natural rubber labeling statement can be incorporated at essentially no incremental cost.

1.8.3 Manufacturing and Printing Costs

Manufacturing and/or materials management personnel order printing of new labels, perform necessary quality-control reviews of the new labels when they arrive, incorporate the new label into manufacturing processes, and oversee removal of the old label from the master batch records and from the bill-of-materials that governs manufacturing operations. The manufacturing and printing cost category is defined to consist entirely of labor costs.

ERG estimated that it takes medical device manufacturers from 4 to 20 hours to incorporate a revised label into manufacturing. The large manufacturer estimate was influenced by circumstances at some large manufacturers that use exceptionally high speed and automated production processes and complicated production systems that require considerable management for each new set of labels.

1.8.4 Inventory Losses

Irreducible Inventory Losses - The irreducible minimum inventory loss represents the extra labels that manufacturers prepare to allow a margin of error in production and that are then discarded when labels are revised. These losses are defined as inevitable because manufacturers generally print enough labeling materials to ensure that sales are not constrained by a shortfall in this relatively low cost input to the production process. In this case, for example, manufacturers might try to time the introduction of new labels to ensure that all label inventories generated after a specific date have the new labeling statement. Nevertheless, there are so many production, labeling, and packaging elements to coordinate that manufacturers cannot be certain of precisely eliminating old inventories. In this case, manufacturers probably will want to switch all of their labeling (primary, secondary, instructions for use, etc.) at the same time to prevent confusion among consumers. Thus, it is very likely that varying quantities of inventory will be lost for different label items.

ERG noted that for an OTC pharmaceutical labeling requirement, the National Drug Manufacturers Association had recently estimated an irreducible inventory loss of $1,000 per shelf-keeping-unit (SKU) (NDMA, 1997). The estimate for OTC products is likely to be higher than that for medical devices due to the higher speed of production on average (more production units per hour) than would generally apply to medical devices. On the other hand, ERG noted that medical device companies would sometimes be discarding inventory for more distinct labeling items per model than would OTC pharmaceutical manufacturers. Medical device manufacturers contacted for this study varied between those who said inventory losses were negligible and those who predicted losses of many thousands of dollars. Based on these data, ERG estimated the irreducible inventory loss at $500 to $5,000 across the size classes.

Excess Inventory Losses - Excess inventory losses of labeling are defined as those, in addition to the irreducible minimum losses, that result from companies having to relabel within a shorter cycle than they envisioned when they stocked their label inventories. In developing the estimate of excess inventory losses, ERG determined that most manufacturers require no more than 6 months of regulatory lead time to deplete virtually their entire inventory of labels. Most of the companies contacted for this study stated that their inventory losses would be negligible. Many companies appear to keep no larger label inventory than that representing 3 months of production. Thus, with the one year lead-time accorded for the natural rubber labeling rule, ERG judged that there would rarely be a significant inventory loss for medical device manufacturers. In making this estimate, ERG assumed that medical device companies became aware of the rule reasonably soon after its publication.

ERG judged, nevertheless, that a small percentage (5 percent) of medical device companies would incur excess inventory losses for reasons that they could not control. The companies that face such losses are judged most likely to be those that face one or more exceptional circumstances in making labeling changes. For example, a small percentage of companies use special labeling components or materials that cannot be quickly provided by suppliers. For example, a few companies use foreign suppliers of specialized packaging and

labeling materials that require 6 to 9 months to acquire. Such companies are likely to purchase relatively large inventories in order to avoid delays in production and to minimize the expense of the material acquisition process. Furthermore, in these cases the inventory that is eventually discarded is likely to be relatively costly. Other companies might have invested in relatively large label inventories for some reason, such as to ensure adequate supplies for European sales.

For companies incurring these excess inventory losses, the value of discarded inventory was estimated to vary from $750 to $7,500 per model for small to large manufacturers. The values are approximate and will certainly vary with the manufacturer's preparedness. As noted, most companies contacted for the study indicated that no inventory losses would occur.

Hypothetically, circumstances might arise that would create larger inventory losses than are estimated here. For example, product inventories might need to be discarded if packages cannot be relabeled for some reason. Nevertheless, none of the companies contacted by ERG predicted such losses or suggested that relabeling problems would exceed the difficulties addressed in this analysis. Therefore, the probability and frequency of exceptional inventory losses beyond those addressed here was judged to be negligible.

1.8.5 Translation Costs

A minority of medical device companies will incur translation costs to comply with the labeling rule. Non-English translations of the natural rubber statement are a regulatory cost for companies that sell devices worldwide using a single set of labeling.[2] Thus companies will translate the statement into all of the language featured in their labeling. Translation costs are not relevant for companies that do not sell devices internationally (which applies to roughly one-half of all medical device manufacturers), or for companies that use separate labeling for international sales.

[2]According to FDA regulation, non-English translations of labeling on devices sold in the United States must be consistent with the English language label.

With the recent expansion in language requirements for products sold in the EU, most companies that use a single set of labeling are providing 12 languages or more on their labeling.

For the cost estimates, ERG assumed a translation cost of $50 per language for each of 12 languages for the affected devices. This cost applies only once per company because all device types and models can use the same translation. Based on the relative distribution of international sales of medical devices, ERG estimated that 30 percent of small companies to 60 percent of large companies will incur translation costs.

1.8.6 Supplementary Labeling Costs

Medical device companies that cannot introduce new labels in time to meet the implementation deadline will resort to the use of supplementary labels, such as stickers. The use of supplementary labels will be especially common among medical device manufacturers who would otherwise face substantial label or product inventory losses. ERG estimated that 10 to 30 percent of companies will use supplementary labels.

Based on discussions with industry consultants and medical device manufacturers, ERG estimated that manufacturers choosing to apply supplementary labels will temporarily lease a pressure-sensitive labeler (automatic or semi-automatic) and hire from 2 to 16 temporary production workers. The temporary production workers are needed to operate the labelers and to manually apply those stickers that cannot be run through or handled by the labeling equipment. The lease cost of a pressure-sensitive labeler for a packaging line is estimated at approximately $1,600 per month. Companies will incur additional engineering and installation costs, estimated at $3,000 per labeler, to adapt the leased labelers to their production operations. ERG estimated that small and medium manufacturers would lease one labeler, and large companies 2 labelers. ERG estimated that the equipment and workers will be employed for a six-week period. The unit cost of a pressure sensitive supplementary label is estimated at $0.02, $0.01, and $0.005 for small,

medium, and large companies, respectively. The estimated costs of all additional equipment and temporary workers were spread over all of the models manufactured per company. The total equipment leasing cost per model for supplementary labeling was estimated to vary from $1,005 for small to $5,725 for large manufacturers. Furthermore, the total cost of supplemental labels per model was estimated at 1,350 to $3,375 across company size categories.[3]

1.8.7 Costs of Major Labeling Format Changes

Some medical device companies will incur additional costs to reformat their labels when their existing labels cannot accommodate the new natural rubber statement. This problem is likely to arise most often among products sold worldwide with the same labeling because of the burden of multi-language translations and additional EU labeling specifications. ERG judged that the bulk of the costs for reformatting will be incurred in the implementation year as company staff formulate methods of achieving compliance. Thus, ERG estimated that regulatory affairs, artwork, and manufacturing changeover costs would all be incurred in the first year. ERG judged that the ongoing incremental cost of additional labeling materials, such as if physically larger labels are required, would be negligible and they have not been modeled.

[3]Because supplemental labels are a temporary solution, ERG assumed that they will only be applied to 3 months' production to deplete excess inventories.

SECTION TWO

COSTS OF COMPLIANCE AND REGULATORY FLEXIBILITY ANALYSIS

This section presents the unit and total industry costs of compliance. ERG then extends the analysis to small businesses in order to address the Small Business Regulatory Enforcement Fairness Act (SBREFA) requirements.

Compliance costs are distributed among business size categories using data from the Small Business Administration (SBA, 1998). For the medical device manufacturing Standard Industrial Classifications (SICs 384 and 385), SBA defines a small business as an entity employing fewer than 500 workers (SBA, 1996). For this analysis, ERG also defined medium-sized businesses as those employing between 500 and 2,499 employees and large businesses as those that employ 2,500 or more.

2.1 Unit Costs of Compliance

ERG combined the individual cost elements to derive the total unit relabeling costs per model for each compliance category (See Table 2-1). The unit costs for the simplest case of permanent labeling revisions (Category 1 (a)) are estimated at $1,815 for small and $7,510 for large companies. The total unit relabeling costs for the supplementary labeling compliance alternative (Category 2) range from $5,205 to $17,597 per model over the three size categories. The relatively large unit cost for applying stickers reflects the costs of hiring temporary labor to affix labels and leasing and operating labeling equipment. Furthermore, with stickers, the artwork (ART) and manufacturing change (MC) components of the label revision process are incurred twice (once for the sticker and once for the permanent label changes). This option will nevertheless

Table 2-1

Unit Costs of Compliance, by Size Category

		Category 1		Category 2
Company Size	Cost Element	Revision w/o Change in Format	Revision with Change in Format	Supplementary Labeling
Small	Regulatory Affairs	$181.76	$282.74	$181.76
	Artwork	$1,000.00	$1,600.00	$2,000.00
	Manufacturing Change	$72.24	$216.72	$144.48
	Irreducible Inventory Loss	$500.00	$500.00	$500.00
	Excess Inventory Loss	$37.50	$37.50	NA
	Translation	$23.57	$23.57	$23.57
	Supplemental Labeling	NA	NA	$1,350.00
	Equipment Leasing Costs	NA	NA	$1,004.91
Total		$1,815	$2,661	$5,205
Medium	Regulatory Affairs	$363.53	$565.49	$363.53
	Artwork	$1,000.00	$1,600.00	$2,000.00
	Manufacturing Change	$144.48	$433.44	$288.96
	Irreducible Inventory Loss	$2,000.00	$2,000.00	$2,000.00
	Excess Inventory Loss	$150.00	$150.00	NA
	Translation	$31.42	$31.42	$31.42
	Supplemental Labeling	NA	NA	$2,250.00
	Equipment Leasing Costs	NA	NA	$1,624.11
Total		$3,689	$4,780	$8,558
Large	Regulatory Affairs	$727.06	$1,130.98	$727.06
	Artwork	$1,000.00	$1,600.00	$2,000.00
	Manufacturing Change	$361.20	$1,083.60	$722.40
	Irreducible Inventory Loss	$5,000.00	$5,000.00	$5,000.00
	Excess Inventory Loss	$375.00	$375.00	NA
	Translation	$47.14	$47.14	$47.14
	Supplemental Labeling	NA	NA	$3,375.00
	Equipment Leasing Costs	NA	NA	$5,725.03
Total		$7,510	$9,237	$17,597

be considered attractive for companies that wish to avoid even larger product or labeling material inventory losses.

As described in Section One, ERG has endeavored to capture the labeling costs and inventory losses generated directly in response to the FDA regulation. While some individual companies will incur larger per model labeling costs than estimated here, the compliance costs presented in this report are approximate averages given the information generated through contacts to affected manufacturers and project consultants.

2.2 Total Costs of Compliance

To derive total costs, it was necessary to estimate the distribution of the affected natural rubber-containing medical device models by size category. The distribution of compliance costs among business size categories will be correlated with their relative shares of models requiring relabeling. This distribution is not known, however. ERG notes from the SBA data that small firms represent slightly more than 90 percent of all firms but only approximately 25 percent of all employment. It is reasonable to assume that small firms' share of models is substantially less than their share of the population of firms but larger than their share of employment. ERG assumed for this analysis that 60 percent of models are produced by small businesses. ERG also assumed, based on their relative shares of industry employment, that 25 percent of models are produced by medium-sized businesses and 15 percent by large businesses. The final distribution of compliance costs among size categories varies from these percentages to some extent, however, because the unit compliance costs estimated for the different size categories are not exactly proportional to the distribution of models.

Table 2-2 presents the aggregate cost forecasts across company size categories for all affected medical devices. The total first-year costs for the industry are estimated at $64.1 million, and the annualized costs (using a 10-year time horizon) are calculated at $9.1 million per year.

Table 2-2

Total Costs of Compliance, By Company Size

Cost Element	Small Companies	Medium Companies	Large Companies	All Companies
Regulatory Affairs	$1,770,821	$1,395,685	$1,578,823	$4,745,329
Artwork	$13,200,930	$4,840,200	$2,508,008	$20,549,138
Manufacturing Change	$1,066,533	$793,394	$1,047,015	$2,906,942
Irreducible Inventory Los	$4,161,125	$6,495,083	$9,082,438	$19,738,646
Excess Inventory Loss	$190,251	$350,094	$574,655	$1,114,999
Translation	$214,996	$112,527	$95,050	$422,574
Supplemental Labeling	$4,573,215	$2,103,563	$1,075,753	$7,752,531
Equipment Leasing Costs	$3,425,652	$1,592,038	$1,855,339	$6,873,029
Total Costs	**$28,603,523**	**$17,682,583**	**$17,817,080**	**$64,103,187**
Total Annualized Costs	**$4,072,498**	**$2,517,602**	**$2,536,751**	**$9,126,852**

Total one-time compliance costs are calculated at $28.6 million for small businesses (44.6 percent of total costs), $17.7 million for medium businesses (27.6 percent), and $17.8 million for large businesses (27.8 percent).

2.3 Regulatory Flexibility Analysis

This section addresses the potential impact of the natural rubber labeling rule on small medical device manufacturers. ERG estimates the affected number of small businesses and then calculates regulatory impacts as a share of industry revenues.

2.3.1 Estimated Number of Affected Firms

The Regulatory Flexibility Act (RFA) requires agencies to determine whether a proposed rule may have a significant effect on a substantial number of small entities. As noted, SBA defines a small business in the medical device manufacturing SICs as an entity employing fewer than 500 employees.

SBA's database, which is based on U.S. Bureau of the Census data, provides a complete size distribution of establishments and businesses in SICs 384 and 385 (See Table 2-3). The SBA data shows 4,185 small businesses in SICs 384 and 385, encompassing all types of medical device manufacturers, including numerous businesses that are not affected by the natural rubber labeling statement rule.

To restrict the estimate to affected small businesses, ERG combined the SBA data with the registration and listing data provided by FDA (see Section 1, Table 1-1). The FDA data enumerates the number of establishments registered for manufacturing of natural rubber-containing medical devices. ERG first distributed the number of registered establishments (2,911) by size

Table 2-3

Distribution of Medical Device Manufacturing Firms
(SIC 384 & 385) by Employment Size

SIC and Industry		Employment Size: Small 0-499 Employees	Medium 500-2499 Employees	Large 2500+ Employees	Industry Total
SIC 3841	Firms	1,150	92	38	1,280
Surgical and Medical Instruments	Establishments	1,166	201	119	1,486
and Apparatus	Employment	32,960	71,151	48,873	152,984
	Avg. Employment Per Firm	29	773	1,286	120
	Receipts ($000)	$4,540,616	$11,000,701	$7,410,287	$22,951,604
	Receipts Per Firm ($000)	$3,948	$119,573	$195,008	$17,931
SIC 3842	Firms	1,497	78	39	1,614
Orthopedic, Prosthetic, and	Establishments	1,583	185	102	1,870
Surgical Appliances and Supplies	Employment	42,559	54,080	34,436	131,075
	Avg. Employment Per Firm	28	693	883	81
	Receipts ($000)	$5,489,162	$9,785,433	$6,789,356	$22,063,951
	Receipts Per Firm ($000)	$3,667	$125,454	$174,086	$13,670
SIC 3843	Firms	633	14	6	653
Dental Equipment and Supplies	Establishments	648	31	15	694
	Employment	9,950	6,077	2,683	18,710
	Avg. Employment Per Firm	16	434	447	29
	Receipts ($000)	$1,126,612	$898,459	$424,483	$2,449,554
	Receipts Per Firm ($000)	$1,780	$64,176	$70,747	$3,751
SIC 3844	Firms	89	22	10	121
X-Ray Apparatus and Tubes and	Establishments	90	39	23	152
Related Irradiation Apparatus	Employment	2,270	11,702	7,344	21,316
	Avg. Employment Per Firm	26	532	734	176
	Receipts ($000)	$505,496	$2,990,676	$1,967,144	$5,463,316
	Receipts Per Firm ($000)	$5,680	$135,940	$196,714	$45,151
SIC 3845	Firms	308	50	22	380
Electromedical and	Establishments	312	66	31	409
Electrotherapeutic Apparatus	Employment	12,339	28,634	12,960	53,933
	Avg. Employment Per Firm	40	573	589	142
	Receipts ($000)	$2,196,916	$6,044,250	$2,607,372	$10,848,538
	Receipts Per Firm ($000)	$7,133	$120,885	$118,517	$28,549
SIC 3851	Firms	508	26	7	541
Ophthalmic Goods	Establishments	521	56	16	593
	Employment	8,619	18,674	10,235	37,528
	Avg. Employment Per Firm	17	718	1,462	69
	Receipts ($000)	$670,169	$1,969,449	$1,126,372	$3,765,990
	Receipts Per Firm ($000)	$1,319	$75,748	$160,910	$6,961
Total, All SICs	Firms	4,185	282	122	4,589
	Establishments	4,320	578	306	5,204
	Employment	108,697	190,318	116,531	415,546
	Avg. Employment Per Firm	26	675	955	91
	Receipts ($000)	$14,528,971	$32,688,968	$20,325,014	$67,542,953
	Receipts Per Firm ($000)	$3,472	$115,918	$166,598	$14,718
	Establishment:Firm Ratio	1.0323	2.0496	2.5082	1.1340
	Establishments as a Percentage of Industry Total	83.0%	11.1%	5.9%	100.0%

Source: SBA, 1998.

according to the overall industry distribution of establishments by size provided in the SBA data. ERG noted that 83.0 percent of establishments in the SBA data are small. Using this estimate, ERG derived an estimate of 2,417 affected small establishments. Next, ERG adjusted the small establishment figure by the ratio of establishments to businesses for small establishments, as found in the SBA data (1.03 establishments per small business). In this fashion, ERG calculated the number of affected small businesses at 2,341.

2.3.2 Compliance Costs as a Share of Small Medical Device Manufacturer Revenues

In order to measure the impact of the final rule on small businesses, ERG calculated the ratio of industry compliance costs to industry revenues. Based on the SBA database, the average revenues per firm ranges from $3.5 million to $166.6 million for small to large companies (see Table 2-4). The annualized compliance costs per firm are estimated at $1,740, $15,960, and $37,172 for small, medium, and large firms, respectively. Consequently, the annualized compliance costs per firm represent 0.05 percent of revenues for small medical device businesses.

2.3.3 Recordkeeping and Reporting Burden

Manufacturers are required to place a natural rubber statement on the labeling of affected medical devices. Revising labeling is a standard procedure in medical device manufacturing that companies routinely follow. No new reporting and recordkeeping activities are required. Therefore, no additional professional skills are required.

Table 2-4

Compliance Costs as a Share of Medical Device Manufacturer Revenues

	Small Companies	Medium Companies	Large Companies	All Companies
Number of Affected Establishments [a]	2,417	323	171	2,911
Number of Affected Firms [b]	2,341	158	68	2,567
Revenues per Firm	$3,471,678	$115,918,326	$166,598,475	$14,718,447
Total Annualized Compliance Costs	$4,072,498	$2,517,602	$2,536,751	$9,126,852
Annualized Compliance Costs per Firm	$1,740	$15,960	$37,172	$3,555
Annualized Compliance Costs as Percent of Revenues	0.050%	0.014%	0.022%	0.024%

Source: FDA, Center for Devices and Radiological Health, 1998, ERG estimates, and Small Business Administration 1998.
[a] Based on the number of registered establishments.
[b] The number of affected firms is computed by dividing the number of affected firms in each size category by the establishment:firm ratio in same category

2.3.4 Impact of Changes in Regulatory Implementation Lead Time on Costs of Compliance

The computed total cost of compliance is based on the 12-month implementation lead time and the other elements described in the published natural rubber statement regulation by the FDA. Manufacturers that utilize cold-seal packaging materials will also have an additional 270 days to come into compliance.[4] FDA also considered alternatives to the regulation, as follows:

- The same labeling requirements with an implementation period of 6 months.
- The same labeling requirements with an implementation period of 24 months.
- The implementation lead time of 12 months, but no allowance for use of stickers as a temporary labeling measure, due to concerns that stickers might become lost or dislodged during medical device distribution.

ERG quantified the impacts of the shorter and longer implementation periods, but did not estimate costs for the last alternative, which is discussed at the end of this section.

To consider shorter or longer implementation periods, ERG adjusted its cost methodology to address the impact of implementation times on (1) the magnitude of excess inventory losses incurred by manufacturers, (2) the percentage of models with excess inventory losses, and (3) the forecast of compliance options taken by manufacturers. With a 6-month lead time, ERG doubled its estimates of the average excess inventory loss per model incurred to $1,500 for small businesses, $6,000 for medium-sized businesses, and $15,000 for large businesses. ERG also judged that, with a shorter lead time, it is likely that many more manufacturers would incur excess inventory losses (see Section 1.7.4 for a discussion of the circumstances that create excess inventory losses). Thus, the percentage of medical device models for which excess inventory losses

[4] Separate estimates were not prepared of the inventory losses or other regulatory costs for manufacturers that use cold-seal packaging, despite the additional 270-day implementation period. In actual practice, this additional time should allow these manufacturers to reduce inventory losses to some degree.

are incurred was increased from 5 to 20 percent for the 6-month implementation period alternative.

For the 24-month implementation period, ERG judged that essentially all manufacturers would avoid excess inventory losses. Extremely few manufacturers carry labeling inventories of more than 2 years. Hence, no excess inventory losses were estimated in this case.

Table 2-5 presents ERG's forecasts of the compliance options manufacturers will choose for the 6-month and 24-month regulatory implementation lead time alternatives. ERG assumed that the use of supplementary labeling would be more common with shorter lead times because more manufacturers would be (1) unable to get new labels prepared in time, and (2) would use stickers to avoid losses of label or product inventories. With a 24-month implementation period, ERG estimated that essentially no manufacturers would need to use supplementary labels.

Tables 2-6 provides a comparison of the total compliance costs under the base case (12-month implementation period) and the two alternative implementation times. With the 6 month-implementation time, annualized compliance costs are estimated to be $11.5 million, approximately 25.9 percent higher than the base case. With the 24-month implementation period, annualized compliance costs are estimated to be $5.5 million, approximately 40 percent lower.

FDA also considered a prohibition on the use of supplementary labels (i.e., stickers) to comply with the rule due to concerns about the effectiveness of this method of labeling. ERG did not quantify the resulting compliance costs due to the difficulty of measuring the potentially very large costs incurred by certain manufacturers. A number of firms use stickers to avoid extensive repackaging of existing product inventory that will not be sold prior to the end of the regulatory implementation period or loss of expensive labeling inventories. Under this alternative, the percentage of companies incurring excess inventory losses and the size of the inventory losses would increase. At least some companies might incur fairly large inventory losses.

Table 2-5

Forecast of Compliance Categories by Company Size For Regulatory Alternatives

6-Month Regulatory Implementation Period

Category	For Natural Rubber-Containing Devices — Company Size: Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging — All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	25%	30%	35%	55%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	40%	30%	20%	40%
Category 3: Incorporation of labeling revision into changes otherwise being made	10%	15%	20%	0%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

24-Month Regulatory Implementation Period

Category	For Natural Rubber-Containing Devices — Company Size: Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging — All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	55%	50%	45%	85%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	0%	0%	0%	0%
Category 3: Incorporation of labeling revision into changes otherwise being made	20%	25%	30%	10%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

Table 2-6

Total Costs of Compliance with Regulatory Alternatives

Lead Time	Small Companies	Medium Companies	Large Companies	All Companies
6 Months				
Total Costs	$34,008,207	$22,337,758	$24,359,661	$80,705,626
Total Annualized Costs	$4,842,004	$3,180,394	$3,468,268	$11,490,665
Percent Change in Annualized Costs from 12-Month Lead Time	18.9%	26.3%	36.7%	25.9%
12 Months				
Total Costs	$28,603,523	$17,682,583	$17,817,080	$64,103,187
Total Annualized Costs	$4,072,498	$2,517,602	$2,536,751	$9,126,852
Percent Change in Annualized Costs from 12-Month Lead Time	NA	NA	NA	NA
24 Months				
Total Costs	$15,278,455	$11,198,150	$12,290,761	$38,767,365
Total Annualized Costs	$2,175,308	$1,594,365	$1,749,928	$5,519,601
Percent Change in Annualized Costs from 12-Month Lead Time	-46.6%	-36.7%	-31.0%	-39.5%

ERG forecast for the base case (12-month implementation scenario) that small businesses were three time more likely than large businesses to use stickers. During contacts to medical device manufacturers, ERG observed that small businesses were much more sensitive to potential losses of label inventories and more likely to benefit by organizing a temporary effort to add stickers to products.

In conclusion, the base case of a 12-month implementation period, with sticker labels allowed, alleviates the cost impacts, particularly those on small businesses. The sticker option also allows numerous companies to lessen potentially significant inventory losses and, based on contacts made during this study, allows a few companies to avoid losses that they would consider quite damaging.

Furthermore, the 12-month implementation period allows the large majority of companies sufficient time to exhaust existing label inventories and avoids the much greater cost impacts that would accompany a 6-month implementation period. ERG did not quantify the cost impacts of possible logistic difficulties that some companies, such as those that manufacture large numbers of natural-rubber containing devices, might face attempting to revise all affected labeling within a 6-month timeframe. These companies might need to delay relabeling of other products, hire and train new labeling staff, incur overtime costs for labeling staff, and incur other exceptional costs. The 24-month implementation period, on the other hand, only eliminates excess inventory losses.

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Part IV

Department of Education

Nationally Recognized Accrediting Agencies and State Approval Agencies; Notice

DEPARTMENT OF EDUCATION

Nationally Recognized Accrediting Agencies and State Approval Agencies

AGENCY: Department of Education.
ACTION: List of nationally recognized accrediting agencies and state approval agencies.

SUMMARY: The U.S. Secretary of Education is required by statute to publish a list of nationally recognized accrediting agencies and State approval agencies (1) whose accreditation or approval is a required element in enabling accredited or approved institutions, programs, or both to establish eligibility to participate in Federal programs and (2) whom the Secretary has determined to be reliable authorities regarding the quality of education or training provided by the institutions or programs these agencies accredit or approve. This document contains the current list of nationally recognized agencies and supersedes any previously published lists of these types of agencies.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW, Room 3915, ROB 3, Washington, DC 20202–7592. Telephone: (202) 708–7417. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: As required by statute [1], the Secretary issues the following list of nationally recognized accrediting agencies and State approval agencies that the Secretary has determined to be reliable authorities concerning the quality of education or training provided by the institutions, programs, or both that these agencies accredit or approve. The criteria the Secretary uses in determining whether a particular agency should be listed as a nationally recognized accrediting agency are contained in 34 CFR part 602, while the criteria for State approval agencies are contained in 34 CFR part 603. The dates specified in parentheses for each agency are the date of initial listing as a nationally recognized agency, the date of the Secretary's most recent grant of recognition to the agency, and the date of the agency's next scheduled review for continued recognition. The geographical scope of recognition of each accrediting agency is the United States, unless stated otherwise. If the Secretary has placed a limitation on the scope of an agency's recognition for purposes of Title IV of the Higher Education Act of 1965, as amended, that limitation is noted in a "Title IV Note" for that agency.

[1] 20 U.S.C. 1094(c)(4), 1141(a), 1145(c)(3), 1401(a)(11)(E), 2471(25)(D), 4351(3), 25 U.S.C. 1813; 38 U.S.C. 3675(a); 42 U.S.C. 298b(6).

I. Regional Institutional Accrediting Agencies

Middle States Association of Colleges and Schools, Commission on Higher Education (1952/1996/2001). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, the U.S. Virgin Islands, the Republic of Panama and a limited number of freestanding American-style institutions abroad that are chartered or licensed by an appropriate agency within the Middle States region.

Middle States Association of Colleges and Schools, Commission on Secondary Schools (1988/1996/1999). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of public vocational/technical schools offering non-degree, postsecondary education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the Virgin Islands.

Title IV Note: Only those public vocational/technical schools accredited by this agency that offer non-degree, postsecondary education may use that accreditation to establish eligibility to participate in Title IV programs.

New England Association of Schools and Colleges, Commission on Institutions of Higher Education (1952/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees as well as associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.

New England Association of Schools and Colleges, Commission on Technical and Career Institutions (1952/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidacy") of secondary institutions with vocational-technical programs at the 13th and 14th level, postsecondary institutions, and institutions of higher education that provide primarily vocational-technical education at the certificate, associate, and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.

Title IV Note: Any public vocational/technical schools accredited by this agency that offer non-degree, postsecondary education and that wish to use that accreditation to establish eligibility to participate in Title IV programs must be accredited by the agency as offering education through the 13th and/or 14th grade level.

North Central Association of Colleges and Schools, Commission on Institutions of Higher Education (1952/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, and the Navajo Nation.

North Central Association of Colleges and Schools, Commission on Schools (1974/1998/2000). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, and the Navajo Nation.

Title IV Note: Only those public vocational/technical schools accredited by this agency that offer non-degree, postsecondary education may use that accreditation to establish eligibility to participate in Title IV programs.

Northwest Association of Schools and Colleges, Commission on Colleges (1952/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of

institutions of higher education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

Southern Association of Colleges and Schools, Commission on Colleges (1952/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (1952/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianna Islands, and the Republic of the Marshall Islands.

Western Association of Schools and Colleges, Accrediting Commission for Schools (1974/1995/1999). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianna Islands, and the Republic of the Marshall Islands.

Title IV Note: Only adult and postsecondary schools accredited by this agency that offer postsecondary programs below the degree level may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (1952/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianna Islands, and the Republic of the Marshall Islands.

II. National Institutional and Specialized Accrediting Agencies

Accreditation Board for Engineering and Technology, Inc. (1952/1997/2001). Scope of recognition: The accreditation of basic (baccalaureate) and advanced (master's) level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate and advanced degree level.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Accreditation Commission for Acupuncture and Oriental Medicine (1988/1995/2000). Scope of recognition: The accreditation of first-professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine.

Title IV Note: Only freestanding schools or colleges of acupuncture or Oriental medicine may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Accrediting Association of Bible Colleges, Commission on Accreditation (1952/1996/2001). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of Bible colleges and institutes offering undergraduate programs.

Accrediting Bureau of Health Education Schools (1982/1995/1998). Scope of recognition: The accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree.

Title IV Note: Only freestanding allied health education schools may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Accrediting Commission of Career Schools and Colleges of Technology (1967/1995/1999). Scope of recognition: The accreditation of private, postsecondary, non-degree-granting institutions and degree-granting institutions, including those granting associate and baccalaureate degrees, that are predominantly organized to educate students for occupational, trade and technical careers.

Accrediting Commission on Education for Health Services Administration (1970/1995/2000). Scope of recognition: The accreditation of graduate programs in health services administration.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Accrediting Council for Continuing Education and Training (1978/1997/2001). Scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing education programs.

Title IV Note: Only those institutions classified by this agency as "vocational" may use accreditation by the agency to establish eligibility to participate in Title IV programs.

Accrediting Council for Independent Colleges and Schools (1956/1995/2000). Scope of recognition: The accreditation of private postsecondary institutions offering business and business-related programs and the accreditation and preaccreditation ("Recognized Candidate") of junior and senior colleges of business (including senior colleges with master's degree programs), as well as independent, freestanding institutions offering only graduate business and business-related programs at the master's degree level.

Title IV Note: The only institutions preaccredited by this agency that may use that preaccreditation to establish eligibility to participate in Title IV programs are private, non-profit junior and senior colleges of business and private, non-profit freestanding institutions offering only graduate business and business-related programs at the master's degree level.

Accrediting Council on Education in Journalism and Mass Communications (1952/1996/2001). Scope of recognition: The accreditation of units within institutions offering professional undergraduate and graduate (master's) degree programs in journalism and mass communications.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Academy for Liberal Education (1995/1997/2001). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education and programs within institutions of higher education that offer liberal arts degrees at the baccalaureate level or a documented equivalency.

Title IV Note: Only institutions of higher education accredited by this agency may use that accreditation to establish eligibility to participate in Title IV programs.

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education (1978/1995/2000). Scope of recognition: The accreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Association of Nurse Anesthetists, Council on Accreditation of Nurse Anesthesia Educational Programs (1955/1996/2001). Scope of recognition: The accreditation of institutions and programs of nurse anesthesia at the certificate, master's, or doctoral degree levels.

Title IV Note: Only hospital-based nurse anesthesia programs and freestanding nurse anesthesia institutions may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (1952/1997/2000). Scope of recognition: the accreditation of law schools.

Title IV Note: Only freestanding law schools may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American Board of Funeral Service Education, Committee on Accreditation (1972/1997/2002). Scope of recognition: The accreditation of institutions and programs awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science.

Title IV Note: Only freestanding schools or colleges of funeral service or mortuary science may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American College of Nurse-Midwives, Division of Accreditation (1982/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Preaccreditation") of basic certificate and graduate nurse-midwifery education programs for registered nurses, as well as the accreditation and preaccreditation of pre-certification nurse-midwifery education programs.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Council on Pharmaceutical Education (1952/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Precandidate" and "Candidate") of professional degree programs in pharmacy leading to the degrees of Baccalaureate in Pharmacy and Doctor of Pharmacy.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Dental Association, Commission on Dental Accreditation (1952/1995/2000). Scope of recognition: The accreditation of predoctoral dental education programs (programs leading to the DDS of DMD degree); dental auxiliary education programs (dental assisting, dental hygiene and dental laboratory technology); and advanced dental educational programs (general practices residency, advanced general dentistry, and the specialties of dental public health, endodontics, oral pathology, orthodontics, oral and maxillofacial surgery, pedodontics, periodontics, and prosthodontics).

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

The American Dietetic Association, Commission on Accreditation/Approval for Dietetics Education (1974/1996/2001). Scope of recognition: The accreditation of coordinated programs in dietetics at both the undergraduate and graduate level, postbaccalaureate dietetic internships, and dietetic technician programs at the associate degree level.

Title IV Note: Only postbaccalaureate dietetic internship programs may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American Occupational Therapy Association, Accreditation Council for Occupational Therapy Education (1952/1995/2000). Scope of recognition: The accreditation of entry-level professional occupational therapy educational programs awarding baccalaureate degrees, post-baccalaureate certificates, professional master's degrees, and combined baccalaureate/ master's degrees, and also for the accreditation of occupational therapy assistant programs leading to an associate degree or certificate.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Optometric Association, Council on Optometric Education (1952/1997/2001). Scope of recognition: The accreditation and preaccreditation ("Reasonable Assurance" and "Preliminary Approval" [for professional degree programs] and "Candidacy Pending" [for optometric residency programs in Veterans" Administration facilities) of professional optometric degree programs, optometric residency programs, and optometric technician (associate degree) programs.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Osteopathic Association, Bureau of Professional Education (1952/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Provisional Accreditation") of freestanding institutions of osteopathic medicine and programs leading to the degree of Doctor of Osteopathy or Doctor of Osteopathic Medicine.

Title IV Note: Only freestanding schools or colleges of osteopathic medicine may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American Physical Therapy Association, Commission on Accreditation in Education (1977/1996/2001). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation" status) of programs for the preparation of physical therapists and physical therapist assistants.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Podiatric Medical Association, Council on Podiatric Medical Education (1952/1995/2000). Scope of recognition: The accreditation and preaccreditation ("Candidate Status") of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

Title IV Note: Only freestanding schools or colleges of podiatric medicine may use accreditation by this agency to establish eligibility to participate in Title IV programs.

American Psychological Association, Committee on Accreditation (1970/1997/1999). Scope of recognition: The accreditation of doctoral programs in clinical, counseling, school and combined professional-scientific psychology, predoctoral internship programs in professional psychology, and postdoctoral residency programs in professional psychology.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Speech-Language-Hearing Association, Council on Academic Accreditation (1967/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Candidacy Status") of Master's and doctoral-level degree programs in speech-language pathology and audiology.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

American Veterinary Medical Association, Council on Education (1952/1997/2001). Scope of recognition:

The accreditation and preaccreditation ("Reasonable Assurance") of programs leading to professional degrees (D.V.M. or D.M.V.) in veterinary medicine.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Association for Clinical Pastoral Education, Inc., Accreditation Commission (1969/1998/2001). Scope of recognition: The accreditation and preaccreditation ("Candidacy for Accredited Membership") of clinical pastoral education (CPE) centers and CPE and supervisory CPE programs.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (1974/1997/2002). Scope of recognition: The accreditation and preaccreditation ("Correspondent" and "Candidate") of advanced rabbinical and Talmudic schools.

Association of Theological Schools in the United States and Canada, Commission on Accrediting (1952/1995/1999). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accredited Status") of freestanding institutions, as well as programs affiliated with larger institutions, that offer graduate professional education for ministry and graduate study of theology.

Title IV Note: Only freestanding institutions, colleges, or seminaries of theology may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Commission on Opticianry Accreditation (1985/1998/2001). Scope of recognition: The accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

The Council on Chiropractic Education, Commission on Accreditation (1974/1997/2001). Scope of recognition: The accreditation of Doctor of Chiropractic programs and single-purpose institutions offering the Doctor of Chiropractic program.

Title IV Note: Only freestanding schools or colleges of chiropractic may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Council on Education for Public Health (1974/1997/2001). Scope of recognition: The accreditation and preaccreditation ("Preaccreditation") of graduate schools of public health, graduate programs in community health education outside schools of public health, and graduate programs in community health/preventive medicine outside schools of public health.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Council on Naturopathic Medical Education (1987/1995/1999). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of institutions and graduate programs in Naturopathy that lead to the degree of Doctor of Naturopathy (N.D.) or Doctor of Naturopathic Medicine (N.M.D.).

Title IV Note: Only freestanding schools or colleges of naturopathic medicine or naturopathy may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Council on Occupational Education (1969/1997/2000). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions that grant the applied associate degree in specific vocational/occupational fields.

Distance Education and Training Council, Accrediting Commission (1959/1996/2001). Scope of recognition: The accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through the distance learning method.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Joint Review Committee on Educational Programs in Nuclear Medicine Technology (1974/1995/1999). Scope of recognition: The accreditation of higher education programs for the nuclear medicine technologist.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Joint Review Committee on Education in Radiologic Technology (1957/1995/2000). Scope of recognition: The accreditation of educational programs for radiographers and radiation therapists.

Title IV Note: Only hospital-based radiologic technology programs and freestanding radiologic technology institutions may use accreditation by this agency to establish eligibility to participate in Title IV programs.

Liaison Committee on Medical Education (1952/1997/2002). Scope of recognition: The accreditation of medical education programs leading to the M.D. degree.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

Montessori Accreditation Council for Teacher Education, Commission on Accreditation (1995/1997/1999). Scope of recognition: the accreditation of Montessori teacher education institutions and programs evaluated by the following review committees: the American Montessori Society Review Committee and the Independent Review Committee.

Title IV Note: Only freestanding Montessori teacher education schools may use accreditation by this agency to establish eligibility to participate in Title IV programs. Further, that accreditation must have been granted in conjunction with the accrediting activities of the review committees listed above.

National Accrediting Agency for Clinical Laboratory Sciences (1974/1996/2001). Scope of recognition: The accreditation of programs in Clinical Laboratory Science/Medical Technology, Clinical Laboratory Technician/Medical Laboratory Technician-Associate Degree, Clinical Laboratory Technician/Medical Laboratory Technician-Certificate, Histologic Technician/Histotechnologist, and Pathologists' Assistant.

Title IV Note: Only hospital-based clinical laboratory science programs and freestanding laboratory science institutions may use accreditation by this agency to establish eligibility to participate in Title IV programs.

National Accrediting Commission of Cosmetology Arts and Sciences (1970/1996/1999). Scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences.

National Association of Nurse Practitioners in Reproductive Health, Council on Accreditation (1996/1998/2002). Scope of recognition: The accreditation of women's health nurse practitioner programs.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

National Association of Schools of Art and Design, Commission on Accreditation (1966/1997/2002). Scope

of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in art, design, or art/design-related disciplines.

Title IV Note: Only freestanding schools or colleges of art and design may use accreditation by this agency to establish eligibility to participate in Title IV programs.

National Association of Schools of Dance, Commission on Accreditation (1983/1997/2002). Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines.

Title IV Note: Only freestanding schools or colleges of dance may use accreditation by this agency to establish eligibility to participate in Title IV programs.

National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, Commission on Community/Junior College Accreditation (1952/1997/2002). Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions.

Title IV Note: Only freestanding schools or colleges of music may use accreditation by this agency to establish eligibility to participate in Title IV programs.

National Association of Schools of Theater, Commission on Accreditation (1982/1997/2002). Scope of recognition: The accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines.

Title IV Note: Only freestanding schools or colleges of theatre may use accreditation by this agency to establish eligibility to participate in Title IV programs.

National Council for Accreditation of Teacher Education (1952/1995/2000). Scope of recognition: The accreditation of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

National Environmental Health Science and Protection Accreditation Council (1995/1996/1998). Scope of recognition: The accreditation and preaccreditation ("Preaccreditation") of baccalaureate programs in environmental health science and protection.

Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.

National League for Nursing Accrediting Commission (1952/1997/1998). Scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.

Title IV Note: Only diploma programs and practical nursing programs not located in a regionally accredited college or university may use accreditation by this agency to establish eligibility to participate in Title IV programs.

New York State Board of Regents (1952/1995/1998). Scope of recognition: The accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education located in the State of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education located in the State of New York.

Transnational Association of Christian Colleges and Schools, Accrediting Commission (1991/1996/1999). Scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of postsecondary institutions that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees.

III. State Approval Agencies for Public Postsecondary Vocational Education

Arkansas State Board of Vocational Education (1975/1994/1998).

Kansas State Board of Education (1975/1998/2002).

Board of Trustees of the Minnesota State Colleges and Universities (1974/1995/1999).

Missouri State Board of Education (1974/1995/1999).

New York State Board of Regents (1974/1998/2002).

Oklahoma State Board of Vocational and Technical Education (1976/1994/1998). Scope of recognition: The approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education.

Oklahoma State Regents for Higher Education (1976/1996/2000). Scope of recognition: The approval of public postsecondary vocational education in the state of Oklahoma for which credit earned is applied toward a degree, diploma, or other postsecondary academic or collegiate award given at State institutions comprising the Oklahoma State System of Higher Education.

Puerto Rico Human Resources and Occupational Development Council (1983/1996/2000).

Utah State Board for Vocational Education (1976/1994/1998).

IV. State Approval Agencies for Nurse Education

Colorado Board of Nursing (1990/1995/1999).

Iowa Board of Nursing (1969/1994/1998).

Maryland Board of Nursing (1985/1994/1998).

Missouri State Board of Nursing (1970/1995/1999).

Montana Board of Nursing (1969/1996/2000).

New Hampshire Board of Nursing (1969/1995/1999).

New York State Board of Regents (1969/1998/2002).

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Program Authority: 20 U.S.C. 1094(c)(4), 1141(a), 1145(c)(3), 1401(a)(11)(E), 2471(25)(D), 4351(3), 25 U.S.C. 1813; 38 U.S.C. 3675 (a); 42 U.S.C. 298b(6).

Dated: September 15, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–25226 Filed 9–21–98; 8:45 am]

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Tuesday
September 22, 1998

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Methylene Chloride; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–71]

RIN 1218–AA98

Methylene Chloride; Final Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: OSHA is amending its standard regulating occupational exposure to methylene chloride (29 CFR 1910.1052) by adding a provision for temporary medical removal protection benefits for employees who are removed or transferred to another job because of a medical determination that exposure to methylene chloride may aggravate or contribute to the employee's existing skin, heart, liver, or neurological disease. OSHA is also amending the startup dates by which employers in certain identified application groups, i.e., who use MC in certain work operations, must achieve the 8-hour time-weighted-average permissible exposure limit and the dates by which they must achieve the short-term exposure limit by means of engineering controls.

On May 4, 1998, OSHA published for comment amendments to the standard along the lines requested in a motion for reconsideration filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the Halogenated Solvents Industry Alliance, Inc., and others. OSHA reopened the rulemaking record for 30 days for the limited purpose of receiving public comment on the amendments (63 FR 24501, May 4, 1998). Based on the rulemaking record and the comments received, OSHA is now adopting the amendments as published, with one minor modification.

DATES: This final rule becomes effective on October 22, 1998, except that the revision of paragraph (n)(2) of § 1910.1052 (regarding start-up dates) becomes effective September 22, 1998. See **SUPPLEMENTARY INFORMATION** for a table of start-up dates established in this final rule.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, 200 Constitution Ave., N.W., Washington, DC 20210, as the recipient of petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: The startup dates established by the methylene chloride standard, as amended by this final rule, are shown in the following table, with the provisions whose startup dates have already passed listed as being "in effect."

STARTUP DATES ESTABLISHED IN THIS FINAL RULE

	Employers in selected applications* with fewer than 20 employees	All other employers with fewer than 20 employees***	Polyurethane foam mfrs. with 20 or more employees	Employers in selected applications* with 1–49 employees and foam fabricators with 1–149 employees	Employers in selected applications* with 50 or more employees and foam fabricators with 150 or more employees	All other employers with 20 or more employees
Engineering controls to achieve 8-hour TWA PEL and STEL.	April 10, 2000 ...	April 10, 2000 ...	October 10, 1999	April 10, 2000 ...	April 10, 1999 ...	In effect.
Respirators to achieve 8-hour TWA PEL.	April 10, 2000 ...	In effect	October 10, 1999** ...	April 10, 2000 ...	April 10, 1999 ...	In effect.
Respirators to achieve STEL	In effect	In effect	In effect	In effect	In effect	In effect.
All other provisions	In effect	In effect	In effect	In effect	In effect	In effect.

*The selected applications/operations are: furniture refinishing; general aviation aircraft stripping; product formulation; use of MC-based adhesives for boat building and repair, recreational vehicle manufacture, van conversion, or upholstery; and use of MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making, or floor refinishing and resurfacing.

**Due to a typographical error, this date was listed as October 10, 2000 in the table accompanying the notice of the motion for reconsideration. However, the date of October 10, 1999 is consistent with the motion.

***This column was inadvertently omitted from the table accompanying the notice for the motion for reconsideration but is consistent with the text of the motion.

OMB Review Under the Paperwork Reduction Act

OSHA submitted an amended Methylene Chloride Information Collection Request (ICR) to the existing Methylene Chloride ICR (OMB Control Number 1218–0179) when the proposal for Methylene Chloride: Notice of Motion of Reconsideration was published. This amendment calculated burden hours and costs for the additional medical examinations resulting from the inclusion of the Medical Removal Protection provisions. On July 2, 1998, OMB approved the amendment. All methylene chloride collections of information expire on 7/31/2001.

This final rule also extends the compliance dates for the implementation of engineering controls and respiratory protection for employees engaged in selected activities. Paragraphs (n)(2)(A), (B), and (C) provide new implementation dates for engineering controls for employers engaged in the following: polyurethane foam manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; product formulation; adhesive users using adhesives for boat building and repair, recreational vehicle manufacture, van conversion, and upholstering; and construction work. Those employers who choose the option of postponing the implementation of engineering controls and respiratory protection are required to conduct quarterly short-term exposure limit (STEL) monitoring until implementation of the engineering controls and respiratory protection. Since this requirement is already present in the final MC standard, the Agency will submit an ICR to OMB to increase those

burden hours attributed to the additional monitoring. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) the collection of information displays a currently valid OMB control number; and (2) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

I. Background

On January 10, 1997, OSHA issued a standard regulating occupational exposure to methylene chloride (MC)(62 FR 1494, January 10, 1997) codified at 29 CFR 1910.1052. The standard was designed to reduce both the risk that worker exposure to MC will cause cancer and the risk that MC will cause or aggravate certain other adverse health effects. The standard reduced the prior 8-hour time-weighted-average permissible exposure limit (8-hour TWA PEL) to MC from 500 parts per million (ppm) to 25 ppm. It also set a short term exposure limit (STEL) of 125 ppm averaged over a 15 minute period.

The 8-hour TWA PEL was set at 25 ppm to reduce, to the extent feasible, the risk that workers exposed to MC would develop cancer. Data showing that MC exposure presents a risk of cancer included animal bioassay data in multiple species, mechanistic studies detailing the metabolism of MC to carcinogenic products in humans, and epidemiological studies suggesting an elevated risk of biliary cancer and astrocytic brain cancer in MC-exposed workers. The agency used a physiologically-based pharmacokinetic (PBPK) model to estimate the cancer risk. OSHA's final risk assessment estimated that, at the prior 8-hour TWA PEL of 500 ppm (a level that the Agency found was considerably higher than the level at which most affected workers were currently exposed, see 62 FR 1565, January 10, 1997), lifetime occupational exposure to MC could result in approximately 125 excess cancer deaths per 1000 exposed workers (62 FR 1563, January 10, 1997, Table VII). At the new 8-hour TWA PEL of 25 ppm, OSHA estimated that the excess cancer risk would be reduced to approximately 3.6 deaths per 1000 workers. Id. OSHA concluded that a significant risk to workers remains at an exposure level of 25 ppm but set the 8-hour TWA PEL at that level because it was the lowest level for which OSHA could document feasibility across all the affected application groups (62 FR 1575, January 10, 1997).

The STEL was set at 125 ppm to minimize the adverse health effects caused by acute exposure to MC. Central nervous system (CNS) depression has been observed at MC concentrations as low as 175 ppm. CNS depression is characterized by fatigue, difficulty in maintaining concentration, dizziness, and headaches. These consequences of MC exposure constitute material impairments of health and, by reducing workers' coordination and concentration, can lead to workplace accidents. Also, MC is metabolized to carbon monoxide (CO) and therefore causes health impairment similar to that caused by direct exposure to CO. Carbon monoxide blocks the oxygen binding site on hemoglobin, producing carboxyhemoglobin, or COHb. Elevated COHb levels reduce the supply of oxygen to the heart and can aggravate pre-existing heart disease and lead to heart attacks. Physical exertion increases the concentration of COHb in MC-exposed workers and thus increases the risk of a heart attack, particularly for persons with silent or symptomatic cardiac disease, who may be susceptible to very small increases in COHb due to an already impaired blood supply to the heart.

The liver and skin are also susceptible to acute effects from MC exposure. Chlorinated hydrocarbons as a class (of which MC is a member) are generally toxic to the liver. However, animal studies indicate that MC is among the least hepatotoxic of this class of compounds. The limited amount of human data that are available is inconclusive but supports the hypothesis that MC is toxic to the liver (62 FR 1515, January 10, 1997). Prolonged skin contact with MC also causes irritation and skin burns (62 FR 1609, January 10, 1997).

Employers must achieve the 8-hour TWA PEL and the STEL, to the extent feasible, by engineering and work practice controls. If such controls are unable to achieve the exposure limits (and during the time they are being implemented), employers must provide appropriate respirators at no cost to employees and ensure that employees use them. The standard does not permit the use of air-purifying respirators to protect against MC exposure because MC quickly penetrates all currently available organic vapor cartridges, rendering air-purifying respirators ineffective after a relatively brief period of time. Therefore, when respiratory protection is required, the standard provides that atmosphere-supplying respirators must be used.

The standard requires employers to provide medical surveillance to employees who are exposed to MC either (1) at or above the action level (12.5 ppm) on 30 or more days per year or at or above the 8-hour TWA PEL or STEL on 10 or more days per year; (2) at or above the 8-hour TWA PEL or STEL for any time period where an employee who has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition requests inclusion in the medical surveillance program; or (3) during an emergency. The medical surveillance must include a comprehensive medical and work history that emphasizes neurological symptoms, skin conditions, history of hematologic or liver disease, signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for cardiac disease, MC exposures, and work practices and personal protective equipment used during such exposures. The standard's medical surveillance procedures focus on MC's noncarcinogenic health effects because a medical surveillance program cannot detect MC-induced cancer at a preneoplastic stage (62 FR 1589, January 10, 1997). However, the standard's medical surveillance provisions can lead to early detection of cancer and to higher survival rates from early treatment.

OSHA found that the standard was both technologically and economically feasible in all of the industrial applications that use MC. However, the Agency recognized that larger employers are better able than smaller ones to absorb or pass through the costs associated with compliance with the standard. To avoid placing an undue economic burden on small businesses, OSHA provided for later startup dates for small employers. Larger employers were given until April 10, 1998 (one year after the standard's effective date) to complete installation of engineering controls to achieve the PEL and STEL, while employers with fewer than 20 employees were given a total of three years, or until April 10, 2000, to do so. Employers with fewer than 20 employees were also given more time than larger employers to comply with the other provisions of the standard. In addition, intermediate startup dates were established for polyurethane foam manufacturers with 20–99 employees because OSHA anticipated that firms in that group could have somewhat higher capital expenditures to meet the requirements of the standard.

After the methylene chloride standard was issued, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of

America (UAW), the Halogenated Solvents Industry Alliance, Inc. (HSIA), and others filed a motion with OSHA asking the Agency to reconsider two aspects of the standard: (1) the agency's decision not to include medical removal protection benefits in the medical surveillance provisions of the standard; and (2) the startup dates for engineering controls and for use of respirators to achieve the 8-hour TWA PEL for employers using MC in certain specific applications. Those applications are:

- Polyurethane foam manufacturing;
- Foam fabrication;
- Furniture refinishing;
- General aviation aircraft stripping;
- Formulation of products containing methylene chloride;
- Boat building and repair;
- Recreational vehicle manufacture;
- Van conversion;
- Upholstery; and
- Use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

II. Summary and Explanation of the Final Rule

After receiving the motion for reconsideration, OSHA published a notice of the motion in the **Federal Register** that contained changes to amend the rule substantially as requested in the motion. 63 FR 24501 (May 4, 1998). In that notice, OSHA explained why it believed the amendments requested in the motion were justified and were consistent with the rulemaking record. OSHA reopened the record for 30 days to allow the public an opportunity to comment on the amendments. Most of the comments the agency received supported the amendments. Several comments in opposition were received. In this section, OSHA describes the amendments to the MC standard being made by this final rule, explains why it concludes the amendments are appropriate in light of the entire rulemaking record, and discusses the comments received in response to the reopening of the record.

Medical Removal Protection Benefits

In this final rule, OSHA is modifying the medical surveillance provisions in paragraph (j) of the MC standard to provide for limited medical removal protection (MRP) benefits.

As discussed above, paragraph (j)(1) of the standard requires employers to provide medical surveillance to employees exposed to methylene chloride (1) at or above the action level on 30 or more days per year or at or above the 8-hour TWA PEL or STEL on 10 or more days per year; (2) at or above the 8-hour TWA PEL or STEL for any time period where an employee who has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition requests inclusion in the medical surveillance program; or (3) during an emergency. Such surveillance includes [paragraph (j)(5)] a comprehensive medical and work history that emphasizes neurological symptoms, skin conditions, history of hematologic or liver disease, signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for cardiac disease, MC exposures, and work practices and personal protective equipment used during such exposures. Paragraph (j)(9) requires the employer to ensure that the physician or other licensed health care provider (PLHCP) who conducts the medical examination provides a written opinion regarding the results of that examination.

Originally, paragraph (j)(9)(i)(A) required that written opinion to include the PLHCP's opinion as to "whether the employee has any detected medical condition(s) which would place the employee's health at increased risk of material impairment from exposure to MC." That paragraph is being amended to provide that the PLHCP's written opinion must include "whether exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke) or dermal disease or whether the employee has any other medical condition(s) which would place the employee's health at increased risk of material impairment from exposure to MC." If the PLHCP recommends removal because exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke) or dermal disease, new paragraph (j)(11) requires the employer to either transfer the employee to comparable work where MC exposure is below the action level or remove the employee from MC exposure. In either case, the employer must provide MRP benefits to the employee under paragraph (j)(12) by maintaining, for up to six months, the employee's earnings, seniority, and other employment rights and benefits as though the employee had not been removed from MC exposure or transferred to a comparable job.

As explained in the notice, MRP benefits are designed to improve employee participation in medical surveillance by removing a potential economic disincentive to such participation. The medical surveillance conducted under the standard can result in a medical opinion that continued MC exposure would endanger the health of a particular worker and a recommendation that the worker should be removed from his or her present job or have his or her work activities otherwise restricted. The possibility of job loss or transfer can lead to concern among workers that participation in medical surveillance could endanger their livelihoods. For this reason, OSHA has generally found that employees will be reluctant voluntarily to cooperate in medical surveillance programs if they believe they could suffer a loss of income as a result. See, *e.g.*, 50 FR 51120, 51154–56 (Dec. 13, 1985) (cotton dust standard); 43 FR 54442–54449 (Nov. 21, 1978) (lead standard). OSHA similarly found, when it issued the MC standard, that MRP benefits would increase employee participation in medical surveillance by removing an economic disincentive to such participation (62 FR 1595, January 10, 1997).

Although OSHA found that MRP benefits would improve employee participation in medical surveillance, the Agency did not provide for such benefits when it originally issued the MC standard. The Agency noted that there was no biological marker to indicate whether an employee's continued exposure to MC would unduly endanger the employee's health, nor could the Agency identify any other objective criteria that could be used to determine when an employee's exposure to MC should be restricted for medical reasons. Because it did not believe it could offer substantive guidance to medical professionals as to when it would be appropriate to remove an employee from further MC exposure or to return a removed employee to the workplace, OSHA decided not to require employers to provide MRP benefits. 62 FR at 1595.

The motion for reconsideration suggested that a provision limiting MRP benefits to situations in which a PLHCP recommends removal based on an opinion that continued exposure to MC would contribute to or aggravate an employee's existing cardiac, hepatic, neurological, or dermal disease would provide sufficient guidance to PLHCPs because the specified organs are the ones known or believed to be susceptible to the noncarcinogenic effects of MC exposure. The parties further recommended that OSHA instruct PLHCPs to presume that an employee's medical condition is unlikely to require medical removal if

the employee is not exposed to MC above the 8-hour TWA PEL. New paragraph (j)(10) includes that presumption and requires employers to remove such an employee only if the PLHCP cites specific medical evidence in support of a removal recommendation.

OSHA believes that the MRP benefits provision recommended in the motion gives adequate guidance to the PLHCPs who are called upon to make recommendations for or against medical removal under the standard. The provision is consistent with MRP provisions in earlier standards that base medical removal decisions on the informed judgment of the health care professionals who conduct medical surveillance under the standards. For example, the lead standard (29 CFR 1910.1025), in addition to requiring medical removal based on high blood lead levels, requires medical removal "on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead." The cadmium standard (29 CFR 1910.1047) requires medical removal if certain biological triggers are met or if a written medical opinion determines that removal is justified by "evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient. . . ." The formaldehyde standard (29 CFR 1910.1048) provides for medical removal if there is a medical finding "that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal."

The American Association of Occupational Health Nurses (AAOHN) suggested that the criteria for medical removal are insufficiently specific and will be difficult for health care professionals to apply (Ex. 3–12). AAOHN states that medical removal works well when it is based on specific biological criteria, such as blood lead levels, but not when it is based on a health care professional's opinion that continued exposure to a contaminant will endanger a worker's health. OSHA disagrees. As noted above, the lead, cadmium, and formaldehyde standards provide for medical removal based on a health care professional's opinion that an employee's existing medical condition will be aggravated by continued exposure to the chemical. OSHA's experience under these standards has shown that the health care professionals who provide medical surveillance have received sufficient guidance from those standards as to when medical removal is appropriate, even when removal is required by medical conditions other than numerical biological triggers. OSHA thus has confidence that the MRP benefits provision in the MC standard, which similarly relies on the informed judgment of health care professionals, will give sufficient guidance to the PLHCPs who will be called upon to make medical removal decisions under the standard.

Organization Resources Counselors, Inc. (ORC) criticized the MRP benefits provision on the basis that OSHA had not estimated the extent to which MRP benefits will increase worker participation in medical surveillance or what incremental benefits might result (Ex. 3–13). Although OSHA cannot quantify precisely the extent to which MRP benefits will increase participation in medical surveillance, it has been OSHA's experience that substantial numbers of workers will be discouraged from participating in medical surveillance if there is a financial disincentive to such participation. For example, in *Phelps Dodge Corp.*, 11 O.S.H. Cas. (BNA) 1441 (Rev. Comm'n 1983), it was reported that 42% of employees failed to undergo medical examinations when they were required to take the examinations on their personal time and provide their own transportation to and from the hospital. Moreover, the workers who most need medical surveillance are those in poor or marginal health, and such workers are likely to be particularly concerned that a medical examination may result in a recommendation that they be removed from their current job. Because MRP benefits will remove a significant financial disincentive to employees participating in medical surveillance, OSHA expects this final rule to result in a significant increase in the number of workers who cooperate with the medical surveillance provided under the MC standard.

Paragraph (j)(10) requires the PLHCP to presume that MC exposure below the 8-hour TWA PEL is not likely to aggravate an existing disease of the heart, liver, central nervous system, or skin. Under this paragraph, a PLHCP may still recommend removal of an employee who is exposed below the 8-hour TWA PEL but must cite specific medical evidence to support the recommendation. Absent such evidence, the employer need not remove the employee. The rulemaking record contains no evidence that exposures below the 8-hour TWA PEL will generally aggravate existing cardiac, hepatic, neurological, and skin diseases, and OSHA therefore believes it is appropriate to require the PLHCP to specifically justify a recommendation that an employee exposed below the 8-hour TWA PEL be medically removed. No comments were received concerning this provision.

When a PLHCP recommends medical removal within the terms of the standard, paragraph (j)(11) requires the employer either to transfer the employee to comparable work where MC exposures are below the action level or to remove the employee from MC exposure. For each employee thus transferred or removed, the employer must maintain the employee's earnings, seniority, and other employment rights and benefits for up to six months. The employer may cease paying MRP benefits before the end of the six-month period upon receipt of a medical determination that the employee's exposure to MC will no longer aggravate any existing cardiac, hepatic, neurological, or dermal disease, or upon receipt of a medical determination concluding that the employee can never return to MC exposure above the action level.

The final rule also adopts provisions similar to those OSHA has included in previous standards that provide for MRP benefits. These provisions (1) allow an employer to condition an employee's receipt of MRP benefits on participation in follow-up medical surveillance [paragraph (j)(12)(ii)]; (2) provide for a reduction in MRP benefits to offset any workers' compensation indemnity payments the employee receives for the same period of time [paragraph (j)(12)(iii)]; (3) provide an offset of MRP benefits against compensation from a publicly or employer-funded compensation program or income the employee receives from other employment that is made possible by virtue of the employee's removal [paragraph (j)(12)(iv)]; and (4) require the employer to pay MRP benefits if it voluntarily removes or restricts an employee due to the effects of MC exposure on the employee's medical condition [paragraph (j)(13)].

The Southern Company (Ex. 3–14) contended that OSHA lacks the statutory authority to provide for MRP benefits and that employee wages should be left to the collective bargaining process. However, the Court of Appeals for the D.C. Circuit has upheld OSHA's statutory authority to require employers to provide MRP

benefits. *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1230 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981). The Court observed that safety issues have traditionally been a subject for collective bargaining but that Congress, by giving OSHA authority to regulate occupational safety and health, expected OSHA regulations to override collective bargaining agreements to the extent necessary to provide safe and healthful workplaces. *United Steelworkers*, 647 F.2d at 1236. MRP benefits promote worker health by encouraging employees to participate in medical surveillance and thereby become aware of whether they have health problems that could be aggravated by MC exposure. OSHA concludes it has the requisite statutory authority to provide for MRP benefits in the methylene chloride standard.

The American Association of Occupational Health Nurses (AAOHN) stated that it generally supports removal of employees who are experiencing adverse health effects as a result of workplace exposure to a hazardous material. Ex. 3–12. However, AAOHN recommended that, rather than adopt the MRP provisions, OSHA should strengthen the requirements for engineering controls, work practices, and medical surveillance. AAOHN also suggested that the medical removal provisions are discriminatory and expressed the belief that the Americans with Disabilities Act (ADA) and state workers' compensation statutes provide adequate remedies for individuals with serious diseases that are aggravated by occupational exposure.

OSHA does not agree with AAOHN that strengthening other provisions of the standard is a viable substitute for MRP benefits. OSHA set the 8-hour TWA PEL at the lowest level for which it could document feasibility across the affected application groups. Accordingly, OSHA cannot require employers generally to achieve lower limits through engineering controls and work practices. OSHA notes, however, that the inclusion of MRP benefits under the standard provides an incentive for employers to reduce MC exposures, where feasible, to levels below those required by the standard to minimize the possibility that MC exposure will contribute to or aggravate an employee's existing cardiac, central nervous system, hepatic, or skin disease and thereby require medical removal. The requirement for MRP benefits will therefore encourage employers to minimize MC exposures to the extent it is feasible to do so. Furthermore, medical removal under the final rule is limited to those employees who are particularly vulnerable to MC exposure because they have existing heart, central nervous system, liver, or skin diseases that could be aggravated by continued MC exposure. OSHA believes that, for these especially susceptible employees, removal from MC exposure that could aggravate their diseases is a necessary means of protection.

OSHA also disagrees with AAOHN's contention that the Americans with Disabilities Act provides adequate remedies for individuals with diseases that would be aggravated by occupational exposure to MC. The ADA requires employers to make reasonable accommodations to an employee with a "disability," which is a physical or mental impairment that substantially limits one of more of the employee's "major life activities" [29 CFR 1630.2(g)]. Those major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working [29 CFR 1630.2(i)]. The cardiac, neurological, hepatic, and dermal diseases which, if aggravated by MC exposure may qualify an employee for MRP benefits, are not necessarily diseases that limit major life activities as defined in the ADA. Therefore, employees who qualify for MRP benefits under this final rule may not be protected by the ADA.

Moreover, even if a worker who is entitled to MRP benefits under this final rule would also qualify for ADA protection, the ADA does not necessarily protect that worker against immediate loss of income. The ADA requires an employer to make reasonable accommodations for a worker whose current job presents an unreasonable risk to the employee's health. However, if no reasonable accommodation is possible, the employer is free to discharge that employee (See Appendix to 29 CFR Part 1630). Therefore, the ADA does not provide the same level of assurance as MRP benefits that participation in medical surveillance will not lead to an immediate loss of the worker's income.

Two commenters in addition to AAOHN (National Air Transportation Association, Ex. 3–9; KAL–AERO, Ex. 3–11) suggested that MRP benefits are not needed because they would duplicate workers' compensation benefits. However, MRP benefits and workers' compensation serve fundamentally different purposes and, in many instances, are not duplicative. Unlike MRP benefits, workers' compensation payments are not a preventive measure available to an employee who must be removed from his or her current job to keep an existing condition from becoming aggravated. Workers' compensation benefits are available only when an employee has already contracted a work-related injury or illness that involves time lost from work and/or medical treatment and has been awarded compensation after submitting a claim.

The underlying diseases that can be aggravated by continued MC exposure and result in MRP benefits under this final rule are not necessarily work-related, and therefore might not qualify an employee for workers' compensation. For example, an employee with a cardiovascular disease that is wholly unrelated to his or her current employment could not collect workers' compensation benefits for that disease even though MC exposure associated with the current job might aggravate that worker's disease. Although that employee would not be eligible for worker's compensation, he or she would qualify for MRP benefits if there is a medical determination that the employee's cardiovascular disease would be aggravated by continued MC exposure.

Some diseases that qualify workers for MRP benefits might be work-related, thereby making the employees eligible for workers' compensation benefits as well. However, the possibility that, in some cases, an employee is eligible for both MRP benefits and workers' compensation does not negate the need for MRP benefits to encourage employees to participate in medical surveillance. The Court of Appeals for the D.C. Circuit has held that MRP benefits may still be needed even though they may overlap with workers' compensation payments. *UAW* v. *Pendergrass*, 878 F.2d 389, 400 (D.C. Cir. 1989). Moreover, new paragraph (j)(12)(iii) of the standard provides that, in cases where both MRP and workers' compensation benefits are payable, the MRP benefits can be reduced by the amount the employee receives for lost wages from workers' compensation. Therefore, the standard ensures that employees are not deterred by a potential loss of income from cooperating with medical surveillance while also ensuring that employers need not provide an employee with MRP benefits and workers' compensation payments that total more than an employee's current earnings.

New paragraph (j)(14)(i) permits the employer to select the initial physician or other licensed health care professional who will conduct the required medical surveillance and recommend whether an employee must be removed for medical reasons. Where

the employer does so, new paragraph (j)(14)(ii) allows employees the option of having the recommendation of the employer-selected PLHCP reviewed by a licensed health care professional of the employee's choice. If the two health care professionals disagree, paragraph (j)(14)(iii) provides that the employer and employee shall instruct them to resolve their disagreement. If they are unable to do so, under paragraph (j)(14)(iv) they must jointly designate a third PLHCP, who must be a specialist in the field at issue and whose written opinion, under paragraph (j)(14)(v), is the definitive medical determination under the standard. OSHA believes that the option for such multi-step review is a necessary part of any MRP benefits provision because it strengthens the basis for medical removal determinations and increases employee and employer confidence in those determinations. OSHA has provided for similar multi-step review in all previous standards that included provisions for MRP benefits.

The Southern Company (Ex. 3–14) contends that multi-step review is "unwarranted and unnecessary" and would interfere with state workers' compensation laws that dictate employee choice of physician or that tell employers how occupational illnesses must be diagnosed and treated. As explained above, however, the diseases that can result in medical removal are not necessarily work-related illnesses that qualify for workers' compensation. Moreover, similar multi-step review provisions have been in effect since the lead standard was issued in 1978, and OSHA is not aware of any conflicts or inconsistencies between such provisions and state laws.

OSHA is adopting, in paragraph (j)(11)(i)(B), a provision that is designed to avoid an undue burden that could result if a small business would need to provide MRP benefits to more than one employee at the same time. Under paragraph (j)(11)(i)(B), if one or more employees are already receiving MRP benefits and the employer receives a recommendation for medical removal of an additional employee, and if comparable work that does not involve exposure to MC at or above the action level is not available for that additional employee, the employer need not remove the additional employee if the employer can demonstrate that removal and the costs of MRP benefits to that employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make further reliance on MRP an inappropriate remedy. Although new paragraph (j)(11)(i)(B) is designed to benefit small businesses, it is not explicitly limited to businesses of a certain size because no single size cutoff would be appropriate for all of the employers who might experience feasibility constraints as a result of providing MRP benefits to multiple employees at the same time. However, because feasibility in relation to the size of the business is taken into account in determining whether an employer may retain an employee in his or her present job under paragraph (j)(11)(i)(B), the application of that provision will effectively be limited to relatively small businesses.

In a case governed by paragraph (j)(11)(i)(B), the employer may retain the additional employee in the existing job until transfer or removal becomes appropriate, provided: (i) the employer or the PLHCP informs the additional employee of the risk to the employee's health from continued MC exposure; and (ii) the employer ensures that the employee receives medical surveillance, including a physical examination, at least every 60 days. OSHA believes that, in the limited circumstances specified in this provision, it is appropriate to allow an employer to retain an employee in his or her present job, even when the PLHCP has recommended removal, provided the employer ensures that the employee receives the more frequent medical surveillance specified in the provision and is fully aware of the health risk. Frequent medical surveillance and full information will enable the employer and employee to take steps to minimize the risk under existing workplace conditions by, for example, implementing those controls that are in place and strictly following work practices that are designed to minimize the employee's MC exposure.

The American Association of Occupational Health Nurses (Ex. 3–12) suggests that this provision is discriminatory and could expose companies to litigation under the Americans with Disabilities Act (ADA). The AAOHN did not explain in what way this provision would violate the ADA, and OSHA does not believe it would. As discussed above, the workers who qualify for MRP benefits under this final rule are not necessarily "disabled" within the meaning of the ADA and, to the extent they are, MRP benefits provide protection to workers that may not be available under the ADA. Moreover, OSHA does not agree with AAOHN that allowing an employer to retain an employee who is eligible for medical removal in his or her current job while one or more other employees are on medical removal is accurately characterized as "discrimination." All employees receive protection from the new MRP benefits provisions beyond that afforded by the current rule. The employee who is retained in his or her present job under paragraph (j)(11)(i)(B) will receive additional protection through enhanced medical surveillance. Paragraph (j)(11)(i)(B) also requires that the employee be informed of the risk to his or her health from continued MC exposure, thereby enabling the employer and employee to take steps necessary to minimize that risk under existing workplace conditions by, for example, implementing those controls that are in place and strictly following work practices designed to minimize the employee's MC exposure.

Several commenters (Imperial Adhesives, Ex. 3–3; Tupelo Foam Sales, Inc., Ex. 3–6; Diversified Brands, Ex. 3–7) urged OSHA to narrow the MRP provisions to the greatest extent possible to reduce their economic impact. These commenters did not, however, offer specific suggestions as to how the economic impact of the provisions could be narrowed. As discussed below in the final economic analysis, OSHA concludes that addition of the provisions for MRP benefits to the MC standard will have a minimal economic impact on businesses of all sizes. Moreover, paragraph (j)(11)(i)(B) permits an employer to retain an employee who would otherwise need to be removed in his or her present job if the employer can demonstrate that the cost of medical removal would impose an undue economic hardship on the business. OSHA therefore believes that the final rule already reduces the economic impact of MRP benefits to the extent possible while still maintaining the protection those benefits afford to workers.

III. Extensions of Startup Dates.

The motion for reconsideration requested that the standard's current final engineering control startup date of April 10, 2000, which was limited in the final standard to employers with fewer than 20 employees, also apply to employers in the specified application groups who have 20–49 employees and to foam fabricators who have 20–149 employees. (When the original standard established different startup dates based on an employer's number of employees, OSHA intended for the number of employees to refer to the total number of workers employed by the particular employer, not the number who work at a particular facility or the number that use methylene chloride in their work. The parties to the motion for reconsideration explained in their motion that they also intended this

definition when they referred to an employer's number of employees). The parties contended that employers in these application groups and size categories, similarly to those with fewer than 20 employees, have limited resources with which to develop and implement engineering controls and will be able to use those resources more efficiently if given additional time to develop and install effective controls and to take advantage of the compliance assistance that OSHA offers. The motion requested shorter extensions of the engineering control dates for larger employers in these application groups.

The parties further requested that respirator use to achieve the 8-hour TWA PEL not be required before the engineering control startup dates for those employers covered by the motion. They contended that workers would be better protected if these employers can concentrate their limited resources on implementing effective engineering controls rather than diverting some of those resources to interim and expensive respiratory protection (i.e., supplied-air respirators) that would no longer be needed a short time later, once full compliance with the 8-hour TWA PEL and STEL is achieved by engineering controls.

In the notice of the motion for reconsideration, OSHA stated that it believed the extensions of the startup dates the parties had requested were justified. The Agency noted that engineering controls, such as local exhaust ventilation, must be properly designed and installed if they are to work properly and provide effective protection. OSHA believed that, for the relatively small employers who would be receiving extensions of the startup dates, additional time to implement engineering controls would enable them to take advantage of compliance assistance that OSHA offers and avoid the uncertainty and expense that would result if each employer attempted to design and implement controls on its own. OSHA further believed that it was appropriate to extend the startup dates for respirator use to achieve the 8-hour TWA PEL to enable the employers receiving that extension to concentrate their resources on developing and implementing engineering controls to reduce airborne concentrations of MC. Based on the comments received and the entire rulemaking record, OSHA is now adopting the requested extensions in paragraph (n) of the final rule.

Most commenters supported the extensions. The National Air Transportation Association (Ex. 3–9) and KAL-AERO (Ex. 3–11) stated that use of MC-based paint strippers in general aviation aircraft stripping had already declined substantially, and that the extended startup dates for that activity would encourage the complete elimination of MC-based paint strippers by the year 2000. The Polyurethane Foam Association (Ex. 3–10) supported the extensions for foam manufacturers and foam fabricators, noting in particular that extending the startup date for respirator use to meet the 8-hour TWA PEL would permit these industries to focus their resources on developing engineering controls.

The National Marine Manufacturers Association (Ex. 3–8) urged OSHA to adopt the extensions for boat building. The Association stated that boat builders now use adhesives that contain MC and that additional compliance time is needed to enable them to determine whether it would be safer to substitute MC-free adhesives, which may be flammable, or to continue to use products that contain MC and install engineering controls to reduce MC exposures. Individual companies supporting the extensions for either their own operations or those of their customers included Benco Sales, Inc. (Ex. 3–1), Imperial Adhesives (Ex. 3–3), Mid South Adhesives, Inc. (Ex. 3–4), Tupelo Foam Sales, Inc. (Ex. 3–6), and Diversified Brands (Ex. 3–7).

Organization Resources Counselors (ORC) was the only commenter opposing the extensions (Ex. 3–13). ORC objected to the deferral of the requirement that the employers covered by the amendments use respiratory protection to achieve the 8-hour TWA PEL until the date that those employers are required to achieve the PEL through engineering controls. ORC notes that MC is a carcinogen and that OSHA has, in its earlier standards for carcinogens, consistently required employers to use respirators to protect employees while engineering controls are being implemented.

OSHA agrees that interim respirator use while engineering controls are being implemented is desirable, and the Agency acknowledged in the notice that it has required interim respirator use in its past air contaminant standards. However, in all of those earlier standards, air-purifying respirators were available that would protect against the contaminant being regulated. For methylene chloride, air-purifying respirators do not provide effective protection because MC quickly penetrates all currently available organic vapor cartridges. For that reason, the MC standard requires that, when respirators are needed, atmosphere-supplying respirators must be provided and used.

Atmosphere-supplying respirators are a relatively expensive type of respiratory equipment, requiring the employer not only to purchase the respirators themselves but also to install an air compressor and associated ductwork or rent cylinders containing breathing air. In the case of methylene chloride, the situation is complicated by the predominance of relatively small companies among the employers whose employees are currently exposed above the 8-hour TWA PEL. For those small employers, the relatively high cost associated with atmosphere-supplying respirators would divert or exhaust resources that can be better spent on developing and installing engineering controls that will permanently and reliably reduce exposures below the 8-hour TWA PEL and STEL. OSHA continues to believe that worker protection is best served by early installation of effective engineering controls and that the smaller employers who are being granted extensions of startup dates by this final rule should therefore be allowed to use their limited resources for engineering controls instead of interim, short-term use of atmosphere-supplying respirators.

Moreover, as explained in the notice, employees will still receive substantial interim protection against MC exposure under these amended startup dates. The STEL will go into effect as scheduled, and employers will be required to ensure that some combination of engineering controls, work practice controls, and respiratory protection reduce exposures below that level. Workers will therefore be protected against acute health effects associated with high short-term exposure to MC. Moreover, reduction of short-term exposures to below the STEL will, in most cases, reduce 8-hour time-weighted average exposures and will thereby provide workers with some interim protection against the chronic effects of MC exposure. If no 15-minute exposures exceed 125 ppm, the 8-hour TWA must by definition be below 125 ppm. In practice, in order to control variable processes such that no excursions above the STEL occur, the average 8-hour concentration may need to be maintained substantially below 125 ppm.

This final rule also does not delay compliance with the requirement that employers implement feasible work practices to reduce MC exposures. Such controls can achieve significant reductions in MC exposures in many workplaces at low cost. Early implementation of work practice controls will also enable employers to evaluate the extent to which exposures

can be reduced by such controls and will enable them to better determine the nature and extent of the engineering controls they will need to achieve the 8-hour TWA PEL and STEL. OSHA has developed Fact Sheets identifying feasible work practice controls for several of the application groups that are receiving extensions of the startup dates in this final rule, and many of those work practices would be feasible and useful for workplaces in other application groups as well. Those work practices were listed in the earlier **Federal Register** notice, 63 FR at 24507–08, and are available in a small entity compliance guide, which can be obtained at OSHA's web site, http://www.osha.gov. Furthermore, the remaining protections of the standard (regulated areas, protective work clothing and equipment, hygiene facilities, hazard communication, employee information and training, and recordkeeping) are already in effect for all employers.

ORC (Ex. 3–13) contends that the final rule does not afford employees sufficient interim protection because it interprets the rule to excuse employers from all use of atmosphere-supplying respirators. However, these amendments do not alter the requirement that employers achieve the STEL and, if necessary, use atmosphere-supplying respirators to do so. This final rule only extends the startup date for using engineering controls and respirators to achieve the 8-hour TWA PEL. Because the STEL will be in effect as originally scheduled, all employers, including those receiving extensions of startup dates to achieve the 8-hour TWA PEL in this final rule, already need to ensure that employee exposures do not exceed the STEL through some combination of engineering controls, work practices, and atmosphere-supplying respirators.

ORC also questions whether employers will know when exposures exceed the STEL because the odor threshold of MC is well above the STEL of 125 ppm. OSHA notes that employers may not rely on the odor of MC to determine whether the STEL is exceeded but must, under paragraph (d) of the standard, conduct exposure monitoring that accurately characterizes the short-term concentrations to which their employees are exposed. Paragraph (d) requires the employer to take "one or more personal breathing zone air samples which indicate the highest likely 15-minute exposures during such operations for at least one employee in each job classification in the work area during every work shift, and the employee sampled [must be the employee] expected to have the highest MC exposure [within the job classification]."

OSHA is concerned, however, that employers who are required only to comply with the STEL and not with the 8-hour TWA PEL during the interim period created by these amendments may not have adequate information to determine whether they are in fact in compliance with the STEL requirement. Under the current standard, if initial measurements for all job classifications (representing the employee in each job classification with the highest short-term exposure) are below the STEL, no additional (periodic) STEL monitoring is required. In the unusual interim period created by these amendments, during which time controls may not have been implemented to ensure that TWA exposures are below the PEL, a single STEL measurement may be inadequate to ensure that employees are receiving adequate interim protection. To assure that STEL monitoring is conducted with sufficient frequency to characterize employees' short term exposures until compliance with the 8-hour TWA PEL is achieved, OSHA is amending Table 1 in the MC standard to require each employer who is receiving an extended startup date in this final rule to conduct quarterly STEL monitoring, during the period covered by that extension, when its 8-hour TWA exposures are above the PEL. Those employers must already conduct quarterly STEL monitoring if their initial measurements show exposures above the STEL. The amendment to Table 1 thus extends the requirement for quarterly monitoring to those employers whose initial measurements are below the STEL.

The purpose of this additional STEL monitoring is to provide ongoing information, to those employers whose monitoring results show exposures above the 8-hour TWA PEL but below the STEL, that their employees continue to be exposed below the STEL. For this purpose, it is sufficient if those employers conduct the additional monitoring for the highest-exposed employee within the single job classification shown to have the highest short-term exposures. Moreover, because this additional STEL monitoring is intended to apply only to those employers whose 8-hour TWA exposures exceed the PEL, those employers who are required to conduct additional STEL monitoring by this amendment need only conduct such monitoring until they are required to be in full compliance with the 8-hour TWA PEL or until they are in fact in compliance with the 8-hour TWA PEL. Any employer whose initial 8-hour TWA exposures are below the PEL need not conduct any additional STEL monitoring under this amendment.

Normally, the last sentence of the note to paragraph (d)(3) allows an employer to discontinue all STEL monitoring for employees where at least two consecutive measurements taken at least 7 days apart are at or below the STEL. This provision does not apply to the additional monitoring required by this amendment which, according to amended Table 1, must be conducted "without regard to the last sentence of the note to paragraph (d)(3)." Once the compliance dates established by these amendments have passed for a particular employer or that employer has achieved compliance with the 8-hour TWA PEL, whichever comes first, the additional monitoring required by these amendments no longer applies, and the note to paragraph (d)(3) would allow that employer to discontinue periodic STEL monitoring for those employees whose exposures are shown to be at or below the STEL by two consecutive measurements taken at least seven days apart. Any TWA or STEL monitoring required after these compliance dates have passed must include each job classification and each shift that does not qualify for discontinuance of monitoring under the note to paragraph (d)(3).

ORC further contends (Ex. 3–13) that it is inappropriate for OSHA to reconsider its earlier rulemaking decisions at the behest of parties who have challenged the standard in court. ORC argues that the possibility of settling litigation over the standard should not induce OSHA to reconsider or change its earlier rulemaking judgments.

OSHA believes that ORC is mistaken in suggesting that OSHA should be unwilling to reconsider its rulemaking judgments when asked to do so by parties who are challenging the rule in court. Agencies have both the right and the duty to reconsider their decisions if they are persuaded that a different course of action would better serve the statutory purpose. Such requests for reconsideration often come from parties who have brought judicial challenges to a rule because these parties are typically the parties who have the greatest interest in the rule and who were most active in the rulemaking proceeding. Here, labor and industry organizations who had been active participants in the rulemaking presented OSHA with a well-supported motion for reconsideration of certain narrow aspects of the methylene chloride standard. Those parties also stated that they would withdraw their judicial

challenges if OSHA amended the standard along the lines they requested. Upon evaluating the motion, OSHA tentatively concluded that the changes the parties sought were justified and afforded the public an opportunity to comment on those changes.

Having considered the entire rulemaking record, including the comments it received in response to the reopening of the record, OSHA concludes that the amendments it is making in this final rule serve the statutory purpose of protecting employees while avoiding excessive economic burdens on employers, particularly small employers. As discussed above, OSHA believes that the addition of MRP benefits to the standard will increase employee participation in the standard's medical surveillance provisions and thereby ensure that employees are aware of medical conditions that could be aggravated by continued MC exposure. OSHA further believes that the extensions of startup dates being granted to some employers will benefit workers by improving the ability of those employers to comply with the standard. The cornerstone of the standard, the 8-hour TWA PEL of 25 ppm, is not being altered by these amendments. OSHA is issuing these amendments because it believes they are justified by the record and will better effectuate the purposes of the Act, not because the Agency is seeking to resolve legal challenges to the methylene chloride standard.

OSHA does, however, believe that the potential withdrawal of the parties' judicial challenges to the MC standard is a positive benefit. Litigation over earlier standards has hindered OSHA's achievement of its statutory duty to protect the health and safety of workers. In some cases, OSHA standards have been vacated by the courts (e.g., *AFL–CIO* v. *OSHA*, 965 F.2d 962 (11th Cir. 1992), and vacated standards cannot protect worker health or safety. Some standards have also been stayed during judicial review (e.g., *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1202 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981)), thereby delaying the protection afforded by those standards. In other cases, courts have required OSHA to reconsider certain aspects of its standards (e.g., *Building & Constr. Trades Dep't* v. *Brock*, 838 F.2d 1258 (D.C. Cir. 1988)), and the additional rulemaking proceedings required by such court orders have delayed implementation of important parts of the rule and have diverted OSHA's resources from other important projects. In carrying out its statutory mandate, OSHA cannot ignore the adverse impact that might result from litigation over its standards. However, any modifications to a standard suggested by a litigant or any other person must be justified on their merits and must assure adequate worker protection. That is the case here, and OSHA is therefore including in the final rule the requirements suggested by the parties to the motion for reconsideration.

IV. Final Economic and Regulatory Flexibility Analysis

OSHA is revising paragraph (j), Medical Surveillance, of the final rule governing occupational exposure to methylene chloride (MC) (29 CFR 1910.1052) to add medical removal protection benefits to the rule. This final economic analysis estimates the costs of complying with the final MRP provisions and then assesses the economic feasibility and potential economic impacts of these costs on firms in the affected sectors. The information used in this analysis is taken from the exposure profile, industry profile, and economic impacts analysis presented in the Final Economic Analysis (Ex. 129) that accompanied OSHA's final rule for methylene chloride (62 FR 1494–1619, January 10, 1997). Relying on the data developed for that analysis to support this revision to the final rule ensures analytical consistency and comparability across the two economic analysis documents.

OSHA's final MC rule did not contain medical removal protection provisions. The amendments being made today respond to a motion for reconsideration filed by the United Auto Workers (UAW), the Halogenated Solvents Industry Alliance, Inc., and others. As requested in that motion, OSHA is adding paragraphs (j)(9)(i)(A) and (B), (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14), dealing with medical removal protection, medical removal protection benefits, voluntary removal or restriction of an employee, and multiple health care professional review, respectively, to the final rule. Medical removal protection (MRP) applies only under certain limited circumstances, i.e., medical removal protection would be required only if a physician or other licensed health care professional finds that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease. The rule instructs the physician or other licensed health care professional to presume that a medical condition is unlikely to require removal from exposure to MC, unless medical evidence indicates to the contrary, if the employee is not exposed to MC at concentrations above the 8-hour TWA PEL of 25 ppm. The physician or other licensed health care professional may also recommend removal from exposure to MC for any other condition that would, in the health care professional's opinion, place the employee's health at risk of material impairment from exposure to MC, but MRP would only be triggered by a finding that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease.

Any employee medically removed must (1) be provided with comparable work where MC exposures are below the action level, or (2) be completely removed from MC exposure. The employee's total pay, benefits and seniority must be maintained throughout the period of medical removal protection, even if the only way to remove the employee from MC exposure is to send him or her home for the duration of the medical removal protection period. The employer may reduce the amount paid to the removed worker to the extent that the worker's previous pay has been offset by other compensation (such as worker's compensation payments) or by wages from another job made possible by the medical removal.

The final rule requires employers to maintain medical removal protection benefits for up to six months. Medical removal protection may be terminated in less than 6 months if a medical determination shows that the employee may return to MC exposure, or a medical determination is made that the employee can never return to MC exposure.

In situations in which no comparable work is available for the medically removed employee, the rule allows the employer to demonstrate that the medical removal and the costs of medical removal protection benefits, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make reliance on medical removal protection an inappropriate remedy. In such a situation, the employer may retain the employee in the existing job until transfer or removal becomes appropriate, provided that the employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until removal or transfer occurs, and that the employer or PLHCP informs the employee of the risk to the employee's health from continued MC exposure.

In conducting this economic analysis, OSHA has estimated the number of workers with the four listed types of conditions (neurological, hepatic, cardiac, and dermal disease) that can trigger MRP. OSHA has assumed that medical removal protection would be extended only to employees exposed above the PEL, as reflected by the presumption. This analysis also assumes that all employers will provide medical removal protection whenever a physician or other licensed health care provider recommends removal, i.e., OSHA has not quantified the number of times small firms may retain an employee for whom a removal recommendation has been made in the employee's existing job due to the employer's financial inability (i.e., economic infeasibility) to remove the employee. Because some very small firms may find that medical removal protection is infeasible in their circumstances but this cost analysis assumes that all such employees will be removed, OSHA believes that this analysis is likely to overestimate the costs associated with MRP.

Costs of Medical Removal Protection Provisions

OSHA's estimates of the costs of the medical removal protection provisions are calculated based on the number of workers eligible for medical removal protection times the frequency of the medical conditions that would trigger medical removal protection in the exposed population times the costs of medical removal protection for each type of medical condition.

Number of Workers Eligible for Medical Removal Protection Under the Final Rule

Because of the presumption stated explicitly in paragraph (j)(11)(i)(B), medical removal protection will be limited in almost all cases to employees exposed to MC at concentrations above the PEL of 25 ppm as an 8-hour TWA. The Final Economic Analysis (Ex. 129) estimated that approximately 55,000 employees in all affected application groups are currently exposed above 25 ppm. This estimate is used here to calculate the number of employees potentially eligible for medical removal protection during the year in which medical removal protection will be in effect but the engineering control requirements of the rule will not yet be in effect for some of the application groups. Once the implementation of engineering controls is required, OSHA assumes, for the purposes of this analysis, that 10 percent of those employees previously exposed to an 8-hour TWA above 25 ppm (5,500 employees) would continue to be exposed to an 8-hour TWA above 25 ppm.

OSHA believes that reliance on these assumptions will lead to an overestimate of the number of employees eligible for medical removal protection because some firms will have implemented controls and lowered the exposures of their employees well before the final standard requires them to do so. Once the standard requires employers to implement engineering controls, OSHA's Final Economic Analysis (Ex. 129) estimated that the exposure of almost all employees would be reduced to MC levels below 25 ppm as an 8-hour TWA. To capture all costs potentially associated with the medical removal protection provisions, OSHA has assumed for this analysis that some employees will continue to be exposed above 25 ppm.

Frequency of Medical Removal Protection Under the Final Rule

Paragraph (j)(11)(i) of the final rule provides for medical removal protection if there is a medical determination that exposure to methylene chloride "may contribute to or aggravate existing cardiac, hepatic, neurological (including stroke), or skin disease." Medical removal protection does not apply if the condition is such that removal from MC exposure must be permanent.

OSHA believes that MC-induced or aggravated neurological symptoms (other than stroke) occur infrequently and that when such protection is triggered by neurological manifestations (other than stroke), the period of time involved in the removal will be relatively brief. OSHA also believes that MC-induced or aggravated heart conditions or strokes are likely to result in permanent medical removal, and thus that employers will not incur the costs of medical removal protection in these cases. This analysis therefore focuses on medical removal protection for MC-induced or aggravated dermatitis or abnormal hepatic conditions. Each of these conditions is likely to resolve with time, proper treatment, or both, and these are therefore the conditions likely to result in a determination that temporary medical removal protection, rather than permanent removal, is needed.

Because the final rule would provide for medical removal protection in situations where exposure to MC contributes to or aggravates the listed condition, this analysis focuses on the frequency with which each covered condition occurs in the working population, and not simply on the frequency with which MC causes these conditions. OSHA has no evidence that hepatic conditions are more prevalent in workplaces that use MC than in the general working age population and therefore assumes that the prevalence of hepatic conditions will be the same as in the general working age population (ages 18–65). OSHA thus estimates that 5 percent of the working population will be found on evaluation to have hepatic conditions sufficiently abnormal to trigger medical removal.

For dermatitis, which is seldom a lasting condition, OSHA similarly assumes, in the absence of evidence to the contrary, that the prevalence in the MC-exposed workforce is the same as the rate in the general working age population. For dermatitis, Vital and Health Statistics (National Center for Health Statistics, 1995) reports that, in 1993, the prevalence of dermatitis was 2.93 percent for persons between 18 and 45 and 2.18 percent for persons between 45 and 65. Weighting using the BLS data cited above, OSHA finds that 2.7 percent of the MC-exposed workforce will be found on the first required medical evaluation to have dermatitis and will be medically removed.

After the standard has been in effect for the first year, OSHA assumes that the prevalence of dermatitis will continue at the same rate. For liver conditions, OSHA assumes that most of the conditions that triggered removal in the first year will have been resolved and that the number of older cases that flare up and have to be treated again, combined with new cases that trigger medical removal, will occur at a combined rate ⅕ that of the initial rate.

Costs of Medical Removal Protection

Employers incur three kinds of costs for medical removal protection: costs for medical evaluations not already required; costs resulting from changing the employee's job, such as those related to retraining and lost productivity; and, where alternative jobs that do not involve MC exposure are not available, the costs of keeping a worker who is not working on the payroll.

Employers may incur costs for medical evaluations (over and above those already required for medical surveillance) for two reasons: to determine if the employee can return to work, and to determine, using multiple PLHCP review, whether the initial medical determination was correct. Because the final rule allows employees to be removed from medical removal protection status only on the basis of a new medical determination, every instance of medical removal protection will require one additional examination.

OSHA estimated the cost of a medical examination at $130 in the Final Economic Analysis (Ex. 129). Every case of medical removal protection would require at least one additional medical evaluation. In addition, OSHA estimates that 10 percent of all removed cases will require a second medical evaluation either for the purpose of multiple health care professional review or because the first examination showed that the employee could not yet be returned to normal duty.

The largest MRP-related costs in almost all cases will be the cost of paying for time away from work for the removed employee. OSHA estimates that the typical dermatitis case will involve 6 days away from work. BLS (BLS, Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1994) reports that, in 1994, the typical lost worktime case of dermatitis involved 3 days away from work. OSHA allowed an additional three days to allow time for a return-to-work determination to be made. For medical removal for hepatic conditions, OSHA estimates that a 4-week period of medical removal will normally be sufficient to provide for stabilization and a return to the normal range for the typical case of elevated liver enzymes. Because almost no cases will be resolved in less than 4 weeks and a small number of cases (such as those involving serious liver disease) may take much longer to resolve, OSHA's cost estimate estimates 5 weeks as the average period of medical removal for these cases.

For the short-term medical removal associated with dermatitis, OSHA has conservatively assumed that the employee will be paid full wages and benefits even though not at work. For the longer term medical removal associated with hepatic conditions, OSHA estimates that, in firms with more than 20 employees, alternative jobs not involving exposure to MC will be found for affected employees. OSHA estimates the costs of moving employees to alternative jobs as equivalent to the loss of 20 person hours in lost productivity and/or retraining expenses. For firms with fewer than 20 employees, OSHA expects that there may be more difficulty finding alternative positions both because fewer alternative positions are available and because more positions in the establishment are likely to involve exposure to MC.

For the very small firms in furniture stripping, where all jobs may involve exposure to MC, OSHA has assumed that all cases of medical removal will involve removing employees from work entirely, and thus that employers will incur the full costs of the employee's wages and benefits for the five weeks the employee is medically removed. Firms with fewer than 20 employees in other application groups tend to be somewhat larger than in furniture stripping and will therefore be more likely to have work that does not involve exposure to MC at levels above the action level. For example, in such small-business-dominated application groups as printing shops, and in small cold cleaning and paint stripping operations, exposure to MC tends to involve only a single employee and is commonly intermittent even for that employee. For establishments with fewer than 20 employees in application groups other than furniture stripping, OSHA estimates that 50% will be able to find alternative employment and 50% will need to send the employee home because alternative jobs without MC exposure cannot be found.

Annualized Cost Estimates

Table 1 shows OSHA's estimated annualized costs for firms in each application group. The total annualized costs for medical removal protection are estimated to be $920,387 per year for all affected employers. The greatest costs are in the cold cleaning application group, the all other industrial paint stripping application group, the construction application group, and the furniture stripping application group. All of these application groups have annualized MRP costs in excess of $100,000 per year.

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TABLE 1

ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS

Application Group	Annualized Costs ($)
Methylene Chloride Manufacturing	70
Distribution/Formulation of Solvents	6,597
Metal Cleaning	
Cold Degreasing and Other Cold Cleaning	307,216
Open-Top Vapor Degreasing	2,709
Conveyorized Vapor Degreasing	378
Semiconductors	1,147
Printed Circuit Boards	0
Aerosol Packaging	2,875
Paint Remover Manufacturing	593
Paint Manufacturing	823
Paint Stripping	
Aircraft Stripping	9,662
Furniture Stripping	80,579
All Other Industrial Paint Stripping	206,619
Flexible Polyurethane Foam Manufacturing	4,296
Plastics and Adhesives Manufacturing and Use	52,639
Ink and Ink Solvent Manufacturing	182
Ink Solvent Use	53,298
Pesticide Manufacturing and Formulation	541
Pharmaceutical Manufacturing	3,576
Solvent Recovery	0
Film Base Manufacturing	0
Polycarbonate Manufacturing	0
Construction	115,297
Shipyards	18,652
TOTAL, ALL APPLICATION GROUPS	920,387

Source: Office of Regulatory Analysis; OSHA; Department of Labor

BILLING CODE 4510–26–C

Potential Cost Savings of the Revisions

OSHA is also altering several provisions concerning the implementation dates for engineering controls and respiratory protection for employers engaged in selected activities. Paragraphs (n)(2)(A), (B), and (C) provide new implementation dates for engineering controls for employers engaged in these selected activities. Under paragraph (n)(3)(E), these same employers would also now be allowed until the implementation date for engineering controls to meet the rule's requirements for respiratory protection to meet the PEL, i.e., the implementation dates for engineering controls and respiratory protection would be the same for employers engaged in these activities.

Qualified employers who choose the option of postponing the implementation of engineering controls and respiratory protection would be required by the final rule to conduct STEL monitoring quarterly until either the implementation date for engineering controls and respiratory protection or the date by which they in fact achieve compliance with the 8-hour TWA PEL. The employers affected by these extensions of the implementation dates for engineering controls and respiratory protection, and thus by the final rule's requirements for quarterly STEL monitoring, are employers with employees exposed above the PEL who are engaged in foam fabrication; furniture stripping; general aviation aircraft stripping; product formulation; adhesive users using adhesives for boat building and repair, recreational vehicle manufacture, van conversions, and upholstering; and construction work for restoration and preservation of building, painting and paint removal, cabinet making, and/or floor refinishing.

OSHA cannot fully evaluate the cost saving effects of these implementation date postponements because OSHA's Final Economic Analysis (Ex. 129) did not provide the data needed to estimate the number of employers in the size classes identified by the final rule for each of the activities affected by the final rule. (OSHA's Final Economic Analysis did analyze impacts on employers of all sizes, but sometimes aggregated them into larger activity groups or different size classes than those specified in these provisions.) OSHA has, however, developed an estimate of the potential cost savings using certain simplifying assumptions. First, OSHA assumes that all employers in the affected application groups will be affected. The effect of this assumption is to include some employers who would not qualify because they do not engage in the prescribed activity, e.g., the estimate includes cost savings for facilities using adhesives for activities other than those specified, i.e., for activities other than boat building and repair, recreational vehicle manufacturing, van conversion or upholstering. This assumption will thus overestimate the cost savings.

OSHA also assumes that no employers will need to install engineering controls or use respiratory protection in order to meet the STEL requirements of the standard. OSHA is uncertain about how many such employers there are, and thus cannot quantify the extent to which this assumption overestimates cost savings. Finally, OSHA assumes that the effect of these provisions of the final rule is that employers of employees currently exposed above the PEL in the affected application groups will not incur the costs of respiratory protection for the two years before they are required to install engineering controls, but will have to provide quarterly monitoring for the STEL during this period.

For each affected employee, the employer would save the costs of installing and maintaining an air-supplied respirator and an air compressor for two years. The Final Economic Analysis (Ex. 129) estimates the annual costs of such respirators as $679 per year. Offsetting this cost savings of $679 per year for each of two years is the cost of quarterly STEL monitoring during that same time period. Based on its Final Economic Analysis (Ex. 129), OSHA estimates the cost of STEL monitoring at these facilities to be $80 for two badge samples. Annual costs for quarterly monitoring would thus be $320 per year (4 times $80). The total cost savings are thus $359 ($679 minus $320) per affected employee per year. OSHA estimates, based on the exposure profile in its Final Economic Analysis (Ex. 129), that there are 18,000 affected employees who are engaged in the activities specified in these provisions. Considering all 18,000 affected employees, these provisions will provide cost savings of $6.4 million per year for each of two years (18,000 employees times $359 per employee). Annualized over ten years at a seven percent discount rate, this represents a potential cost savings of $960,000 per year.

Because this estimate of potential cost savings is based on assumptions that may overestimate the cost savings of the revisions to the final rule, OSHA is not using this estimate of cost savings to offset the costs of MRP in its cost and economic impact analysis. This means that the costs reflected in this analysis will be overstated to some extent after these amendments go into effect.

Economic Impacts

Table 2 combines the cost data from Table 1 and the economic profile information provided in the Final Economic Analysis for the Methylene Chloride rule (Ex. 129) to provide estimates of the potential impacts of these compliance costs on firms in affected application groups. The medical removal protection required by the final rule is clearly economically feasible: on average, annualized compliance costs amount only to 0.0014 percent of estimated sales and 0.03 percent of profits. These impacts do not take into account the cost savings described above. For all but one application group—furniture stripping—compliance costs are less than 0.07 percent of profits, and less than 0.003 percent of the value of sales. Even in furniture stripping, the annualized costs of medical removal protection are still only 0.015 percent of sales and 0.3 percent of profits. Impacts of this magnitude do not threaten the economic feasibility of firms in any affected application group. If highly unusual circumstances were to arise that pose such a threat, the standard allows specifically for the cost impact to be considered on a case-by-case basis.

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Table 2

Screening Analysis to Identify Possible Economic Impacts of the Proposed MC Standard's Medical Removal Provisions

Application Group	Number of Affected Establishments	Annualized Costs of Compliance as Percent of Sales	Annualized Costs of Compliance as Percent of Profit
Manufacture of MC	4	0.0000%	0.0004%
Distribution/Formulation of Solvents	320	0.0003%	0.0048%
Metal Cleaning			
Cold Degreasing and Other Cold Cleaning	23,717	0.0001%	0.0021%
Open-Top Vapor Degreasing	278	0.0001%	0.0016%
Conveyorized Vapor Degreasing	45	0.0001%	0.0014%
Semiconductors	239	0.0000%	0.0002%
Printed Circuit Boards	141	0.0000%	0.0000%
Aerosol Packaging	50	0.0001%	0.0012%
Paint Remover Manufacturing	80	0.0001%	0.0015%
Paint Manufacturing	49	0.0001%	0.0027%
Paint Remover Use (Paint Stripping)			
Aircraft Stripping	300	0.0001%	0.0017%
Furniture Stripping	6,152	0.0154%	0.2977%
All Other Industrial Paint Stripping	35,041	0.0000%	0.0010%
Flexible Polyurethane Foam Manufacturing	100	0.0003%	0.0093%
Plastics and Adhesives Manufacturing and Use	3,487	0.0000%	0.0000%
Ink and Ink Solvent Manufacturing	15	0.0000%	0.0003%
Ink Solvent Use	11,869	0.0004%	0.0098%
Pesticide Manufacturing and Formulation	60	0.0001%	0.0018%
Pharmaceutical Manufacturing	108	0.0000%	0.0004%
Solvent Recovery	35	0.0000%	0.0000%
Film Base	1	0.0000%	0.0000%
Polycarbonates	4	0.0000%	0.0000%
Construction	9504	0.0027%	0.0705%
Shipyards	25	0.0025%	0.0655%
ALL APPLICATION GROUPS	91,624	0.0014%	0.0298%

Source: Office of Regulatory Analysis; OSHA; Department of Labor

BILLING CODE 4510–26–C

OSHA's cost methodology for this final rule tends to overestimate the costs and economic impacts of the standard for several reasons. First, as discussed in the section on potential cost savings, OSHA has not taken into account the cost savings some employers will realize from the extended implementation dates that are permitted by the final rule.

Other aspects of OSHA's methodology also tend to result in cost overestimates. OSHA's use of general population prevalence data to estimate the prevalence of conditions that might lead to medical removal overestimates costs by ignoring the possibility that workers in MC establishments may be healthier than the general population, i.e., it ignores the "healthy worker" effect. OSHA has also assumed that all unusual hepatic conditions will lead to medical removal, when in many cases no medical removal protection will be necessary. Finally, OSHA has also included in its cost estimate all cases involving medical removal, when it is in fact likely that some smaller firms would be able to argue that the cost of extending MRP benefits to an additional employee would not be feasible (and would therefore make reliance on MRP an inappropriate remedy), and thereby avoid removing that additional employee, as allowed by paragraph (j)(11)(i)(B).

Regulatory Flexibility Screening Analysis and Certification

Tables 3 and 4 provide a regulatory flexibility screening analysis. As in the analysis for all firms in Table 2, OSHA used the cost data presented in Table 1 in combination with the data on small firms presented in the Final Economic Analysis (Ex. 129). Table 3 shows annualized compliance costs as a percentage of revenues and profits using SBA definitions of small firms for each relevant SIC code within each application group. This analysis shows that costs as a percentage of revenues and profits are slightly greater than is the case for all firms in the SIC, but still average only 0.0017 percent of revenues and 0.035 percent of profits. The most heavily impacted industry is furniture stripping, but the impacts in this group are the same for all firms in the group because all furniture stripping firms are small using the SBA definition.

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TABLE 3

Screening Analysis of Potential Economic Impacts on Smaller Firms
(Small Establishments and Firms as Defined by SBA under Section 3 of The Small Business Act)

Application Group	Number of Small Establishments Affected	Costs As a Percentage of Profits for Small Firms	Costs As a Percentage of Sales for Small Firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	278	0.0005%	0.0072%
Metal Cleaning			
Cold Degreasing and Other Cold Cleaning	22,365	0.0003%	0.0067%
Open-Top Vapor Degreasing	262	0.0003%	0.0051%
Conveyorized Vapor Degreasing	42	0.0002%	0.0044%
Semiconductors	185	0.0000%	0.0002%
Printed Circuit Boards	109	0.0000%	0.0000%
Aerosol Packaging	47	0.0002%	0.0019%
Paint Remover Manufacturing	77	0.0001%	0.0026%
Paint Manufacturing	62	0.0002%	0.0045%
Paint Remover Use (Paint Stripping)	77	0.0001%	0.0026%
Aircraft Stripping	173	0.0004%	0.0088%
Furniture Stripping	6,152	0.0154%	0.2977%
All Other Industrial Paint Stripping	33,044	0.0001%	0.0029%
Flexible Polyurethane Foam Manufacturing	49	0.0001%	0.0034%
Plastics and Adhesives Manufacturing and Use	3,281	0.0002%	0.0031%
Ink and Ink Solvent Manufacturing	11	0.0000%	0.0004%
Ink Solvent Use	9,210	0.0005%	0.0106%
Pesticide Manufacturing and Formulation	49	0.0001%	0.0034%
Pharmaceutical Manufacturing	15	NA	NA
Solvent Recovery	24	0.0000%	0.0000%
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,086	0.0033%	0.0866%
Shipyards	0	NA	NA
ALL APPLICATION GROUPS	84,573	0.0017%	0.0352%

NA=No small firms in this application group.

Source: Office of Regulatory Analysis; OSHA; Department of Labor

TABLE 4

Sceening Analysis of Potential Economic Impacts on Firms with Fewer than 20 Employees

Application Group	Number of Small Establishments Affected	Costs As a Percentage of Profits for Small Firms	Costs As a Percentage of Sales for Small Firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	139	0.0018%	0.0322%
Metal Cleaning			
Cold Degreasing and Other Cold Cleaning	9,223	0.0005%	0.0110%
Open-Top Vapor Degreasing	0	NA	NA
Conveyorized Vapor Degreasing	11	0.0005%	0.0132%
Semiconductors	0	NA	NA
Printed Circuit Boards	20	0.0000%	0.0000%
Aerosol Packaging	10	0.0006%	0.0072%
Paint Remover Manufacturing	34	0.0003%	0.0114%
Paint Manufacturing	7	0.0006%	0.0194%
Paint Remover Use (Paint Stripping)	34	0.0003%	0.0114%
Aircraft Stripping	75	0.0011%	0.0335%
Furniture Stripping	5,900	0.0155%	0.3034%
All Other Industrial Paint Stripping	25,441	0.0002%	0.0042%
Flexible Polyurethane Foam Manufacturing	8	0.0010%	0.0386%
Plastics and Adhesives Manufacturing and Use	498	0.0013%	0.0264%
Ink and Ink Solvent Manufacturing	3	0.0002%	0.0022%
Ink Solvent Use	5,395	0.0011%	0.0237%
Pesticide Manufacturing and Formulation	40	0.0010%	0.0386%
Pharmaceutical Manufacturing	0	NA	NA
Solvent Recovery	17	0.0000%	0.0000%
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,085	0.0044%	0.1596%
Shipyards	0	NA	NA
ALL APPLICATION GROUPS	55,907	0.0026%	0.0644%

NA=No small firms in this application group.

Source: Office of Regulatory Analysis; OSHA; Department of Labor

BILLING CODE 4510–26–C

As noted in the discussion of costs, firms with fewer than 20 employees are much more likely to incur greater costs for medical removal protection because such firms may have difficulty in finding a job that does not involve exposure to MC at levels above the action level. OSHA therefore examined annualized compliance costs as a percentage of sales and profits for firms with fewer than 20 employees.

Table 4 shows the results of this analysis. For the typical affected firm with fewer than 20 employees, the annualized costs of medical removal protection represent 0.0026 percent of sales and 0.064 percent of profits. Furniture stripping has the greatest potential impacts—annualized costs are 0.016 percent of sales and 0.3 percent of profits for firms in this application group. These impacts do not constitute significant impacts, as envisioned by the Regulatory Flexibility Act. However, because unusually prolonged medical removal without an alternative job within the establishment might present problems for these very small firms, the standard includes a provision [paragraph (j)(11)(i)(B)] requiring special consideration of the feasibility of, economic burden imposed by, medical removal protection when an employer would otherwise need to provide MRP benefits to more than one employee. This provision ensures that impacts are not unduly burdensome even in rare and unusual circumstances. Therefore, based on its analyses both of impacts and small firms using the SBA definitions, and of very small firms with fewer than 20 employees, OSHA certifies that the MRP provisions in this final rule will not have a significant impact on a substantial number of small entities.

V. Federalism

This final rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt state laws relating to issues for which Federal OSHA has issued occupational safety and health standards. Under the OSH Act, if an occupational safety or health issue is addressed by an OSHA standard, a State law addressing the same issue is preempted unless the State submits, and obtains Federal OSHA approval of, a plan for the development of occupational safety and health standards and their enforcement. Occupational safety and health standards developed by such State-Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions.

This final MC rule revises the current MC standard by adding a provision for limited medical removal protection benefits and by extending certain startup dates for employers who use MC in certain applications. As under the current MC standard, states with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular state while ensuring that their standards are at least as effective as the Federal standard.

VI. State Plans

The 23 States and two territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication of this final rule or amend their existing standards to ensure that their standards are "at least as effective" as the Federal MC standard as amended by this final rule. Those states and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous substances, Occupational safety and health.

Signed at Washington, DC this 16th day of September, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of CFR 29 part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. Section 1910.1052 would be amended by revising paragraphs (d)(3), (j)(9)(i)(A) and (B), and paragraph (n)(2), and by adding paragraphs (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14) as follows:

1910.1052 Methylene Chloride

* * * * *

(d) *Exposure monitoring.*

* * * * *

(3) *Periodic monitoring.* Where the initial determination shows employee exposures at or above the action level or above the STEL, the employer shall establish an exposure monitoring program for periodic monitoring of employee exposure to MC in accordance with Table 1:

TABLE 1—INITIAL DETERMINATION EXPOSURE SCENARIOS AND THEIR ASSOCIATED MONITORING FREQUENCIES

Exposure scenario	Required monitoring activity
Below the action level and at or below the STEL.	No 8-hour TWA or STEL monitoring required.
Below the action level and above the STEL	No 8-hour TWA monitoring required; monitor STEL exposures every three months.
At or above the action level, at or below the TWA, and at or below the STEL.	Monitor 8-hour TWA exposures every six months.

TABLE 1—INITIAL DETERMINATION EXPOSURE SCENARIOS AND THEIR ASSOCIATED MONITORING FREQUENCIES—Continued

Exposure scenario	Required monitoring activity
At or above the action level, at or below the TWA, and above the STEL.	Monitor 8-hour TWA exposures every six months and monitor STEL exposures every three months.
Above the TWA and at or below the STEL	Monitor 8-hour TWA exposures every three months. In addition, without regard to the last sentence of the note to paragraph (d)(3), the following employers must monitor STEL exposures every three months until either the date by which they must achieve the 8-hour TWA PEL under paragraph (n) of this section or the date by which they in fact achieve the 8-hour TWA PEL, whichever comes first: employers engaged in polyurethane foam manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; product formulation; use of MC-based adhesives for boat building and repair, recreational vehicle manufacture, van conversion, or upholstery; and use of MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making, or floor refinishing and resurfacing.
Above the TWA and above the STEL	Monitor 8-hour TWA exposures and STEL exposures every three months.

[*Note to paragraph (d)(3)*: The employer may decrease the frequency of 8-hour TWA exposure monitoring to every six months when at least two consecutive measurements taken at least seven days apart show exposures to be at or below the 8-hour TWA PEL. The employer may discontinue the periodic 8-hour TWA monitoring for employees where at least two consecutive measurements taken at least seven days apart are below the action level. The employer may discontinue the periodic STEL monitoring for employees where at least two consecutive measurements taken at least 7 days apart are at or below the STEL.]

* * * * *

(j) *Medical surveillance.*

* * * * *

(9) *Written medical opinions.*

(i) * * *

(A) The physician or other licensed health care professional's opinion concerning whether exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke) or dermal disease or whether the employee has any other medical condition(s) that would place the employee's health at increased risk of material impairment from exposure to MC.

(B) Any recommended limitations upon the employee's exposure to MC, including removal from MC exposure, or upon the employee's use of respirators, protective clothing, or other protective equipment.

* * * * *

(10) *Medical Presumption.* For purposes of this paragraph (j) of this section, the physician or other licensed health care professional shall presume, unless medical evidence indicates to the contrary, that a medical condition is unlikely to require medical removal from MC exposure if the employee is not exposed to MC above the 8-hour TWA PEL. If the physician or other licensed health care professional recommends removal for an employee exposed below the 8-hour TWA PEL, the physician or other licensed health care professional shall cite specific medical evidence, sufficient to rebut the presumption that exposure below the 8-hour TWA PEL is unlikely to require removal, to support the recommendation. If such evidence is cited by the physician or other licensed health care professional, the employer must remove the employee. If such evidence is not cited by the physician or other licensed health care professional, the employer is not required to remove the employee.

(11) *Medical Removal Protection (MRP).*

(i) Temporary medical removal and return of an employee.

(A) Except as provided in paragraph (j)(10) of this section, when a medical determination recommends removal because the employee's exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or skin disease, the employer must provide medical removal protection benefits to the employee and either:

(*1*) Transfer the employee to comparable work where methylene chloride exposure is below the action level; or

(*2*) Remove the employee from MC exposure.

(B) If comparable work is not available and the employer is able to demonstrate that removal and the costs of extending MRP benefits to an additional employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make further reliance on MRP an inappropriate remedy, the employer may retain the additional employee in the existing job until transfer or removal becomes appropriate, provided:

(*1*) The employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until transfer or removal occurs; and

(*2*) The employer or PLHCP informs the employee of the risk to the employee's health from continued MC exposure.

(C) The employer shall maintain in effect any job-related protective measures or limitations, other than removal, for as long as a medical determination recommends them to be necessary.

(ii) End of MRP benefits and return of the employee to former job status.

(A) The employer may cease providing MRP benefits at the earliest of the following:

(*1*) Six months;

(*2*) Return of the employee to the employee's former job status following receipt of a medical determination concluding that the employee's exposure to MC no longer will aggravate any cardiac, hepatic, neurological (including stroke), or dermal disease;

(*3*) Receipt of a medical determination concluding that the employee can never return to MC exposure.

(B) For the purposes of this paragraph (j), the requirement that an employer return an employee to the employee's former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(12) *Medical Removal Protection Benefits.*

(i) For purposes of this paragraph (j), the term medical removal protection benefits means that, for each removal, an employer must maintain for up to six months the earnings, seniority, and other employment rights and benefits of the employee as though the employee had not been removed from MC exposure or transferred to a comparable job.

(ii) During the period of time that an employee is removed from exposure to MC, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iii) If a removed employee files a workers' compensation claim for a MC-related disability, the employer shall continue the MRP benefits required by this paragraph until either the claim is resolved or the 6-month period for payment of MRP benefits has passed, whichever occurs first. To the extent the employee is entitled to indemnity payments for earnings lost during the period of removal, the employer's obligation to provide medical removal protection benefits to the employee shall be reduced by the amount of such indemnity payments.

(iv) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from either a publicly or an employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(13) *Voluntary Removal or Restriction of an Employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MC or otherwise places any limitation on an employee due to the effects of MC exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to those required by paragraph (j)(12) of this section.

(14) *Multiple Health Care Professional Review Mechanism.*

(i) If the employer selects the initial physician or licensed health care professional (PLHCP) to conduct any medical examination or consultation provided to an employee under this paragraph (j)(11), the employer shall notify the employee of the right to seek a second medical opinion each time the employer provides the employee with a copy of the written opinion of that PLHCP.

(ii) If the employee does not agree with the opinion of the employer-selected PLHCP, notifies the employer of that fact, and takes steps to make an appointment with a second PLHCP within 15 days of receiving a copy of the written opinion of the initial PLHCP, the employer shall pay for the PLHCP chosen by the employee to perform at least the following:

(A) Review any findings, determinations or recommendations of the initial PLHCP; and

(B) conduct such examinations, consultations, and laboratory tests as the PLHCP deems necessary to facilitate this review.

(iii) If the findings, determinations or recommendations of the second PLHCP differ from those of the initial PLHCP, then the employer and the employee shall instruct the two health care professionals to resolve the disagreement.

(iv) If the two health care professionals are unable to resolve their disagreement within 15 days, then those two health care professionals shall jointly designate a PLHCP who is a specialist in the field at issue. The employer shall pay for the specialist to perform at least the following:

(A) Review the findings, determinations, and recommendations of the first two PLHCPs; and

(B) Conduct such examinations, consultations, laboratory tests and discussions with the prior PLHCPs as the specialist deems necessary to resolve the disagreements of the prior health care professionals.

(v) The written opinion of the specialist shall be the definitive medical determination. The employer shall act consistent with the definitive medical determination, unless the employer and employee agree that the written opinion of one of the other two PLHCPs shall be the definitive medical determination.

(vi) The employer and the employee or authorized employee representative may agree upon the use of any expeditious alternate health care professional determination mechanism in lieu of the multiple health care professional review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

* * * * *

(n) *Dates.*

* * * * *

(2) *Start-up dates.* (i) Initial monitoring required by paragraph (d)(2) of this section shall be completed according to the following schedule:

(A) For employers with fewer than 20 employees, within 300 days after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within 255 days after the effective date of this section.

(C) For all other employers, within 150 days after the effective date of this section.

(ii) Engineering controls required under paragraph (f)(1) of this section shall be implemented according to the following schedule:

(A) For employers with fewer than 20 employees: within three (3) years after the effective date of this section.

(B) For employers with fewer than 150 employees engaged in foam fabrication; for employers with fewer than 50 employees engaged in furniture refinishing, general aviation aircraft stripping, and product formulation; for employers with fewer than 50 employees using MC-based adhesives for boat building and repair, recreational vehicle manufacture, van conversion, and upholstering; for employers with fewer than 50 employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within three (3) years after the effective date of this section.

(C) For employers engaged in polyurethane foam manufacturing with 20 employees or more: within thirty (30) months after the effective date of this section.

(D) For employers with 150 or more employees engaged in foam fabrication; for employers with 50 or more employees engaged in furniture refinishing, general aviation aircraft stripping, and product formulation; for employers with 50 or more employees using MC-based adhesives in boat building and repair, recreational vehicle manufacture, van conversion and upholstering; and for employers with 50 or more employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within two (2) years after the effective date of this section.

(E) For all other employers: within one (1) year after the effective date of this section.

(iii) Employers identified in paragraphs (n)(2)(ii)(B), (C), and (D) of this section shall comply with the requirements listed below in this subparagraph by the dates indicated:

(A) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the 8-hour TWA PEL, in accordance with paragraphs (c)(1), (e)(3), (f)(1) and (g)(1) of this section: by the applicable dates set out in paragraphs (n)(2)(ii)(B), (C) and (D) of this section for the installation of engineering controls.

(B) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the STEL in accordance with paragraphs (e)(3), (f)(1),

and (g)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(C) Implementation of work practices (such as leak and spill detection, cleanup and enclosure of containers) required by paragraph (f)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(D) Notification of corrective action under paragraph (d)(5)(ii) of this section: no later than (90) days before the compliance date applicable to such corrective action.

(iv) Unless otherwise specified in this paragraph (n), all other requirements of this section shall be complied with according to the following schedule:

(A) For employers with fewer than 20 employees, within one (1) year after the effective date of this section.

(B) For employers engaged in polyurethane foam manufacturing with 20 to 99 employees, within 270 days after the effective date of this section.

(C) For all other employers, within 255 days after the effective date of this section.

* * * * *

[FR Doc. 98–25211 Filed 9–21–98; 8:45 am]

BILLING CODE 4510–26–P

federal register

Tuesday
September 22, 1998

Part VI

Department of Commerce

International Trade Administration

Methylene Chloride; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980903230–8230–01]

RIN 0625–ZA08

Support Desired From the International Trade Administration (ITA) for Overseas Air/Defense Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice seeks comments from U.S. firms, professional show organizers, trade associations, and any other entities or persons to help ITA formulate a uniform, equitable program for supporting U.S. exhibitors at overseas air/defense shows. These shows entail unique elements such as government-to-government sales support, regulatory considerations, assistance with foreign military/buyer delegations, multi agency coordination, high level advocacy support, costly space requirements, and working with multiple private organizers in dispersed U.S. pavilions. Consequently, ITA is requesting information on the best mix of services, representation, and promotional activities that can be provided by ITA and show organizers at these events. Under applicable legal principles, ITA may be required to charge organizers or exhibitors a fee for some of the services provided. The notice provides specific lists of fee and non-fee services for consideration. Respondents are asked to comment on the lists and also on the need for a unified, centralized, or official American identity at air/defense shows, as well as how ITA can best achieve this where needed.

DATES: Written comments should be received on or before cob October 30, 1998.

ADDRESSES: Direct all written comments to Export Promotion Services, "Air/Defense Show RFI," Room 2116, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Washington, D.C. 20230. Faxed comments should be sent to (202) 482–0115. E-mail comments to dhuber@cs.doc.gov.

FOR FURTHER INFORMATION CONTACT: Donald Huber, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Washington, D.C. 20230. Telephone: (202) 482–2525. Fax: (202) 482–0115. E-mail: dhuber@cs.doc.gov.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA), a U.S. Department of Commerce (USDOC) agency responsible for trade promotion and development, is requesting information and comments from U.S. companies, exhibitors, show organizers, trade associations and other interested parties concerning appropriate ITA support at major international air and defense shows. This information will be used to formulate a policy of how to provide support that will meet the objectives of exhibitors, the trade show and aerospace/defense industry, and ITA in an equitable, consistent, and cost-effective manner.

ITA has privatized the recruitment, organization, and management of most U.S. pavilions at international trade shows. However, overseas sales in the air/defense industry still require government involvement at these shows to provide appropriate officials, market/regulatory knowledge, key contacts, agency coordination, exhibitor counseling, equipment support, etc. With fewer resources, ITA must provide government support within limited appropriated funding and cost-recovery requirements. Consequently, ITA is seeking to identify what functions and activities industry places the highest priority on, bearing in mind that applicable legal principles may require exhibitors or organizers to pay for such activities from ITA on a cost recovery or contributory basis. ITA also seeks comments on the activities that should be undertaken by organizers.

List A outlines those activities/functions that ITA believes are basic government support activities, are important, and likely could be provided at no direct additional cost to exhibitors/organizers. List B outlines those government support services/activities that likely would be provided on a cost recovery basis. List C outlines items that ITA believes are appropriate for show organizers to provide. ITA seeks comments on the content of lists A, B, and C; the priority rankings of the items on the lists; and which items should go into a standard package of ITA support services for air/defense shows.

ITA support and services for these shows are currently handled through the Trade Fair Certification (TFC) program for certified shows, or for the Paris Air Show, via a Request For Proposal (RFP). Air/defense shows are unique in various aspects and can entail extensive government support. They are large, complex operations involving government-to-government product sales, regulatory and licensing considerations, interaction and coordination with many foreign military/buyer delegations, multi agency interaction, host government coordination, advocacy support from high level government officials, operational government space requirements, complex logistical efforts, and multiple private organizers in several dispersed U.S. pavilions, with each organizer often requesting different services. Consequently, the expense for ITA support at these shows can be more than the Trade Fair Certification fee ($1,500) provides. It is estimated that providing list B services can entail direct costs to ITA of $5,000 to $20,000 per show, exclusive of the official reception. These costs would be recovered through fees from an air/defense show support program under consideration by ITA. The fee for this program would vary for each show depending on the cost and amount of support required.

Comments are also requested on the need for, if any, of a more centralized or unified USA presence at these events, as well as how best to achieve this. Whereas many countries have a single, official national pavilion at air/defense shows, U.S. companies can exhibit at any one of several privately organized "USA" pavilions in various exhibit halls, or independently. Though these privately organized groupings of U.S. companies often use some form of USA identification, they have no official status or connection with the U.S. Government (USG) or foreign governments. ITA's certification of a private exhibit manager to organize and manage a United States pavilion and the RFP process do provide an official status and government partnership recognized by foreign buyers, but do not provide any certainty of a unified American presence or identity, especially if all of the pavilions are not certified or are widely dispersed. We would like comments on the value, if any, and the feasibility of providing a more unified, centralized, or official United States identity at air/defense shows.

ITA is looking to develop a uniform, but flexible, package of services, policies, and fees that can be adapted to each air/defense show depending on U.S. national interest, size, attendance, support needed, number of organizers, etc. We feel there should be an appropriate, balanced role for exhibitors, organizers, ITA, associations, and other parties that fosters the best combination of support for increasing the success of U.S. exhibitors at these shows.

In conclusion, ITA would appreciate your comments concerning—

1. ITA's proposed lists (see A,B,C following) of services for these shows.

2. What additional services, functions, and support you feel ITA should provide.

3. What policies, procedures, official recognition, and funding arrangements ITA should follow to best serve U.S. exhibitors at air/defense shows.

4. If needed, how to provide a more unified, centralized, or official U.S. identity at these shows.

Information submitted in response to this RFI may be subject to public disclosure. Any information that you believe is business confidential, the disclosure of which would cause substantial competitive harm to your firm, should be so marked.

(Authority: 15 U.S.C. 4721.)

List A: Basic ITA Air/Defense Show Support Activities

Since the organization and management of most U.S. pavilions in overseas trade shows has been privatized, overseas USDOC Commercial Sections in local U.S. Embassies do not have appropriated budget funds for extensive support of trade shows. The level or amount of basic support activities shown below will vary depending on resources available and what the USG feels is necessary and appropriate support for each show. The list below outlines show support that may be provided without cost recovery fees to exhibitors/organizers. However, for any of these activities to be carried out on-site, organizer(s) must provide adequate operational space at no cost.

1. A level of official government representation appropriate for the show. Representation may range from numerous high-level officials to no representation at all. Includes officials from DOC, ITA, Bureau of Export Administration (BXA), the embassy, other agencies, the White House, etc., for activities such as an opening ceremony, obtaining industry/product information, representing U.S. interests at official functions/events, industry discussions, etc.

2. Official advocacy—at the show or follow-up company/project support where appropriate.

3. Basic foreign delegation facilitation—providing officially available information on foreign delegations and their schedules to exhibitors. (Does not include providing pre-show identification of individual exhibitor products/interests to delegations, obtaining delegation member identification/interests, delegation matchmaking, coordination of delegation visits, delegation escorting, introductions, etc.)

4. Information concerning any official events, ceremonies, or meetings in connection with the show. Includes U.S. Information Agency press information.

5. Briefing/coordination/scheduling/hosting for visiting high level USG officials.

6. Invitations to appropriate local foreign government officials for official functions.

7. Coordination of government operations/messages, distribution of USG event information, inter/intra agency communications/coordination, etc. (Space for these operations would be donated by organizers/exhibitors.)

8. Facilitation requests to fair authorities, host government, or other official agencies as appropriate.

List B: Value-Added, Cost-Recovery Air/Defense Show Services

1. Individual matchmaking with local firms/buyers for exhibitors prior to/at the show.

2. Pre-show and at-show customized foreign delegation facilitation, matching, and support—includes pre-show identification and distribution of individual exhibitor's products/interests to delegations, identification of delegation members and their interests, delegation information gathering/support from U.S. commercial sections in other countries, at-show tracking/coordination of delegation visits, language facilitation, delegation briefings, meeting arrangements with individual delegation members, escorting delegations through U.S. pavilions, delegation introductions to U.S. exhibitors, regional/worldwide pre-show marketing/letters and promotion, follow-up contacts with local/regional governments/buyers, etc.

3. Counseling and Information services—

- Operation of a full Business Information Office (BIO) booth in the organizers' pavilion to provide ITA services/program information, staff assistance, expert country/market/company counseling, official ITA presence and endorsement of the organizer; collect results data; etc. The BIO will be staffed a reasonable number of hours each day by professional U.S. Embassy representatives knowledgeable about the industry, market, and business practices in the region, as well as knowledgeable about all ITA services.
- Business counseling/assistance—Visits to exhibitor booths/meetings by post staff to provide specific company counseling, exchange information, advise on specific contacts, etc.

4. Expanded Operational Support/Meeting Space—

- For government/industry group meetings/discussions, agency briefings, government-industry information exchanges, etc.
- For individual company matchmaking, delegation member meetings, and private meetings with government officials.
- For private counseling appointments with post, ITA/Trade Development (TD), and other government experts.
- For USG operations/coordination, inter/intra agency support, delegation coordination, etc.
- For industry/market briefing
- For specially arranged social events

Meeting space may be combined where appropriate.

5. Pre-show *local host-country* promotion/publicity to local industry buyers/distributors, calls, mailings, ads—general or highlighting U.S. exhibitors.

6. Organizer use of Trade Fair Certification logo or other official air/defense show emblem as an endorsement or indication of an official qualifying/U.S. pavilion status.

7. Embassy industry/market briefing for exhibitors on local regulations, business practices, market situation, etc.

8. General or customized market research/trade data for exhibitor/organizer use.

9. Promotional/marketing support letters to potential exhibitors; Presidential/Secretarial letters for the organizer.

10. Official reception or other government hospitality/introduction functions for exhibitors. (Funded by ticket sales and managed by post.)

11. Embassy pre-show press releases; notice in post commercial newsletter to local industry and other official venues in-country or regionally.

12. Official invitations to specified attendees for government/organizer/exhibitor events, seminars, meetings, receptions, etc.,

13. US&FCS domestic office network promotion/event information distribution.

14. Pre-show notification to domestic offices to arrange counseling for exhibitors.

15. US&FCS Washington based U.S. pre-show publicity—press releases; notices in Business America; to the National Association of State Development Agencies and National League of Cities; ITA Websites, STAT–USA, etc.

16. Pre-show and at-show publicity/support from other regional U.S. embassies.

17. Special briefings on standards, consortiums, regional regulations, etc.

18. ITA industry mailing lists to organizers.

19. TD Aerospace Product Literature Center operations (funded by participant fees through the Trade Events Deposit Fund).

20. Unified catalog/directory of all U.S. exhibitors with welcoming letters.

21. Additional staffing (interns, translators, hosts) and overtime.

22. Official identification/signage—emblems, flags, banners, agency logos, passes/tickets, badges, for ceremonies, meetings, etc., for reproduction or use when necessary.

23. Travel beyond local commuting by staff or other government experts/officials.

24. Locator service.

25. Arranging U.S. sponsorship support/courtesy services; fair service facilitation.

26. Post-show marketing follow-up activities—buyer matchmaking meetings with exhibitors, small group matchmaking tour to other cities in the region, or other specially arranged events.

27. Assistance for firms/organizers with commercial show-related problems normally handled by private firms such as customs clearance, etc. if needed.

List C: What U.S. Show Organizers Should Provide

1. The capability and experience to fully advertise, market, and recruit U.S. exhibitors and foreign visitors/buyers to air/defense trade shows.

2. Ability to provide an attractive, high-quality U.S. Pavilion area (inside and outside.) —includes the capability and experience to organize/manage a U.S. Pavilion, contract for space, construct exhibit booths/stands, and provide related signage, decorations, utilities, services, etc.

3. Adequate promotional plan that also targets New-To-Market and Small/Medium size firms.

4. Cost-recovery fees, as appropriate.

5. Space/booth for U.S. Government Business Information Office.

6. Recruitment of at least 10 U.S. firms.

7. A reliable contact to coordinate with the U.S. Government.

8. Valid contract/agreement/letter for space with the fair authority/owner.

9. Professional promotional literature

10. Exhibitor directory.

11. End of show surveys/data.

12. Reasonable booth/stand pricing.

13. Regular contact with local ITA program and U.S. Embassy staff

13. Coordination with fair authority.

14. Coordination with other U.S. show organizers when necessary.

15. Reproduction of government logos and sponsorship identification when appropriate.

Mary Fran Kirchner,

Chairman, Air/Defense Show Review Committee, Deputy Assistant Secretary, Export Promotion Services, International Trade Administration.

Ellis R. Mottur,

Member, Air/Defense Show Review Committee, Deputy Assistant Secretary, for Technology & Aerospace Industries, International Trade Administration.

[FR Doc. 98–25249 Filed 9–21–98; 8:45 am]

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Federal Register

Tuesday
September 22, 1998

Part VII

The President

Proclamation 7125—To Modify Certain Provisions of the Special Textile and Apparel Regime Implemented Under the North American Free Trade Agreement

Federal Register
Vol. 63, No. 183
Tuesday, September 22, 1998

Presidential Documents

Title 3—

The President

Proclamation 7125 of September 18, 1998

To Modify Certain Provisions of the Special Textile and Apparel Regime Implemented Under the North American Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On December 17, 1992, the Governments of Canada, Mexico, and the United States entered into the North American Free Trade Agreement ("the NAFTA"). The NAFTA was approved by the Congress in section 101(a) of the North American Free Trade Agreement Implementation Act ("the NAFTA Implementation Act") (19 U.S.C. 3311(a)), and was implemented with respect to the United States by Presidential Proclamation 6641 of December 15, 1993.

2. Section 201(b)(1)(A) of the NAFTA Implementation Act (19 U.S.C. 3331(b)(1)(A)) authorizes the President to proclaim such modifications or continuation of any duty as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the NAFTA, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)). Among the provisions previously proclaimed to implement the NAFTA schedule of concessions is heading 9802.00.90 of the Harmonized Tariff Schedule of the United States ("HTS"), which affords duty-free entry into the United States of certain textile and apparel goods assembled in Mexico, in which all fabric components were wholly formed and cut in the United States and then exported to Mexico ready for assembly and there assembled and returned to the U.S. customs territory.

3. In order to maintain the general level of reciprocal and mutually advantageous concessions under the NAFTA, I have determined that new provisions should be added to chapter 99 of the HTS to provide that specified apparel articles, which are assembled in Mexico using interlining fabrics that are cut but not formed in the United States, and which otherwise meet the conditions set forth in HTS heading 9802.00.90, may enter the United States free of duty on a temporary basis because the necessary interlining fabrics for such apparel are no longer formed in the United States. The consultation and layover requirements provided for in section 103(a) of the NAFTA Implementation Act have been observed.

4. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483)("Trade Act"), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including, but not limited to, sections 103(a) and 201(b) of the NAFTA Implementation Act, section 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) Subchapter VI of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3)(a) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the signing of this proclamation.

(b) At the close of the effective period specified therefor in the Annex, HTS subheadings 9906.98.02 and 9906.98.03 shall cease to apply to imported articles, except that goods described in such subheadings that were shipped and in transit on a through bill of lading on such specified date shall be eligible for the tariff treatment specified therein as if entered on the last day of such effective period. At the close of the day that is one year from the close of the effective period specified in such HTS subheadings, U.S. note 28 to subchapter VI of chapter 99, such subheadings and their immediately superior text beginning with the word "Apparel" shall all be deleted from the HTS.

(c) The United States Trade Representative is authorized, after obtaining advice from the appropriate advisory committees established under section 135 of the Trade Act (19 U.S.C. 2155), to extend the effective period of the new tariff provisions for one additional year, upon publication in the **Federal Register** of a notice modifying the new HTS subheadings accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of September, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

Billing code 3195–01–P

ANNEX

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the President signs this Proclamation, the Harmonized Tariff Schedule of the United States ("HTS") is modified by inserting in numerical sequence in subchapter VI of chapter 99 the following new U.S. note, tariff subheadings and superior text, with language inserted in columns of the HTS headed "Heading/Subheading", "Article Description", "Rates of Duty 1-Special", and "Effective Period", and with the new superior text inserted at the same level of indentation as the article description in subheading 9906.73.02:

[U.S. Note:]

"28. For purposes of subheadings 9906.98.02 and 9906.98.03, the term "interlining fabrics" refers to the following:

(a) A chest plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction, the foregoing of coarse animal hair or man-made filaments, of a type used in the manufacture of men's, boys', women's or girls' tailored suit jackets and suit-type jackets;

(b) A weft-inserted warp knit fabric that contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermoplastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets; or

(c) A woven fabric that contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's, boys', women's or girls' tailored suit jackets and suit-type jackets."

[HTS subheadings:]

	"Apparel articles assembled in Mexico in which all fabric components were wholly formed and cut in the United States except interlining fabrics of a type described in U.S. note 2B to this subchapter that were cut in the United States but not formed therein and that are incorporated in such articles, the foregoing of a type otherwise described in heading 9802.00.90 of the tariff schedule:		
9906.98.02	Men's or boys' suit-type jackets, whether or not imported as parts of suits or ensembles, the foregoing of wool or fine animal hair or of man-made fibers or subject to wool restraints or to man-made fiber restraints (provided for in subheadings 6103.11.00, 6103.12.10, 6103.12.20, 6103.19.10, 6103.19.15, 6103.19.90, 6103.21.00, 6103.23.00, 6103.29.10, 6103.31.00, 6103.33.10, 6103.33.20, 6103.39.10, 6103.39.80, 6203.11.10, 6203.11.20, 6203.12.10, 6203.12.20, 6203.19.20, 6203.19.30, 6203.19.90, 6203.21.00, 6203.23.00, 6203.29.20, 6203.31.00, 6203.33.10, 6203.33.20, 6203.39.10, 6203.39.20, or 6203.39.90).....	Free (MX)	On or before 08/31/99
9906.98.03	Women's or girls' suit-type jackets, whether or not imported as parts of suits or ensembles, the foregoing of wool or fine animal hair or of man-made fibers or subject to wool restraints or to man-made fiber restraints (provided for in subheadings 6104.11.00, 6104.13.10, 6104.13.20, 6104.19.10, 6104.19.15, 6104.19.80, 6104.21.00, 6104.23.80, 6104.29.10, 6104.29.20, 6104.31.00, 6104.33.10, 6104.33.20, 6104.39.10, 6104.39.20, 6204.11.00, 6204.13.10, 6204.13.20, 6204.19.10, 6204.19.20, 6204.19.80, 6204.21.00, 6204.23.00, 6204.29.20, 6204.29.40, 6204.31.10, 6204.31.20, 6204.33.10, 6204.33.20, 6204.33.40, 6204.33.50, 6204.39.20, 6204.39.30, or 6204.39.80).....	Free (MX)	On or before 08/31/99"

[FR Doc. 98-25476

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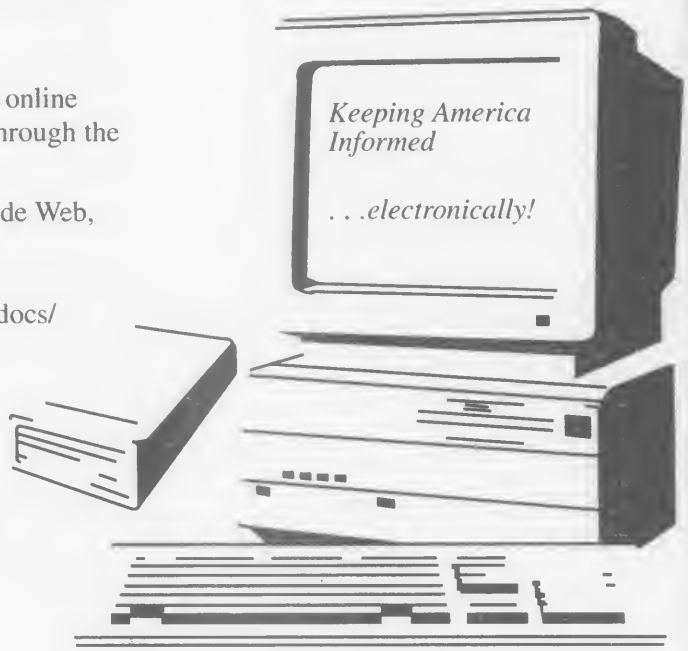

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