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Presidential Documents

Title 3—

The President

Executive Order 12856 of August 3, 1993

Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA) established programs to provide the public with important information on the hazardous and toxic chemicals in their communities, and established emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances;

WHEREAS, the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals;

WHEREAS, the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA) established that it is the national policy of the United States that, whenever feasible, pollution should be prevented or reduced at the source; that pollution that cannot be prevented should be recycled in an environmentally safe manner; that pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and that disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner;

WHEREAS, the PPA required the Administrator of the Environmental Protection Agency (EPA) to promote source reduction practices in other agencies;

WHEREAS, the Federal Government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies;

WHEREAS, the environmental, energy, and economic benefits of energy and water use reductions are very significant; the scope of innovative pollution prevention programs must be broad to adequately address the highest-risk environmental problems and to take full advantage of technological opportunities in sectors other than industrial manufacturing; the Energy Policy Act of 1992 (Public Law 102–486 of October 24, 1992) requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficiency and renewable energy technologies; and

WHEREAS, as the largest single consumer in the Nation, the Federal Government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention;

AND IN ORDER TO:

Ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment;

Require Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification; and

Help encourage markets for clean technologies and safe alternatives to extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions;

NOW THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the EPCRA, the PPA, and section 301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Applicability.*

1–101. As delineated below, the head of each Federal agency is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that agency's activities and facilities, and for ensuring that agency's compliance with pollution prevention and emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA and PPA.

1–102. Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a "facility" as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3–304(b) of this order ("covered facilities"). Except as provided in section 1–103 and section 1–104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (*e.g.*, certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds). This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad.

1–103. Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1–104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order.

1–104. To facilitate compliance with this order, each Federal agency shall provide, in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors.

Sec. 2–2. *Definitions.*

2–201. All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term "person", as defined in section 329(7) of EPCRA, also includes Federal agencies.

2–202. *Federal agency* means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–203. *Pollution Prevention* means "source reduction," as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

2–204. *GOCO* means a Government-owned/contractor-operated facility which is owned by the Federal Government but all or portions of which are operated by private contractors.

2–205. *Administrator* means the Administrator of the EPA.

2–206. *Toxic Chemical* means a substance on the list described in section 313(c) of EPCRA.

2–207. *Toxic Pollutants.* For the purposes of section 3–302(a) of this order, the term "toxic pollutants" shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as of December 1, 1993. Federal agencies also may choose to include releases and transfers of other chemicals, such as "extremely hazardous chemicals" as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901–6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403–7626); however, for the purposes of establishing the agency's baseline under 3–302(c), such "other chemicals" are in addition to (not instead of) the section 313 chemicals. The term "toxic pollutants" does not include hazardous waste subject to remedial action generated prior to the date of this order.

Sec. 3–3. *Implementation.*

3–301. *Federal Agency Strategy.* Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3–302 through 3–305 of this order for that agency. A copy thereof shall be provided to the Administrator. Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order. The strategy shall include, but shall not be limited to, the following elements:

(a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation, and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area.

(b) A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements.

3–302. *Toxic Chemical Reduction Goals.* (a) The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

(b) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1–102 of this order. In no event shall the baseline be later than the 1994 reporting year.

(c) Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3–301 of this order. The baseline

for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3–301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3–304 of this order, if practicable, or through an agency report that is made available to the public.

(d) The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3–302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of the facilities' pollution prevention programs.

3–303. *Acquisition and Procurement Goals.* (a) Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section.

(b) Within 24 months of the date of this order, the Department of Defense (DOD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DOD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards.

(c) Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order.

(d) Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad.

3–304. *Toxics Release Inventory/Pollution Prevention Act Reporting.* (a) The head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

(b) The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3–304(a) of this order.

(c) The first year of compliance shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

3–305. *Emergency Planning and Community Right-to-Know Reporting Responsibilities.* The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be: (a) With respect to the provisions of section 302 of EPCRA, emergency planning notification shall be made no later than 7 months after the date of this order.

(b) With respect to the provisions of section 303 of EPCRA, all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order.

(c) To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995.

(d) The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994.

(e) These compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables.

Sec. 4–4. *Agency Coordination.*

4–401. By February 1, 1994, the Administrator shall convene an Interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order.

4–402. Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001.

4–403. *Technical Advice.* Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order. In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

4–404. Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A–106 and A–11, respectively. Federal agencies should apply, to the maximum extent practicable, a life cycle analysis and

total cost accounting principles to all projects needed to meet the requirements of this order.

4–405. *Federal Government Environmental Challenge Program.* The Administrator shall establish a "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as "Model Installations." The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention.

Sec. 5–5. *Compliance.*

5–501. By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order.

5–502. The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. Nothing in this order shall be construed as making the provisions of sections 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particular agency facilities.

5–503. Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3–304 and 3–305 of this order.

5–504. The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3–304 and 3–305 of this order. Except as excluded under section 6–601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3–304 and 3–305 of this order.

5–505. Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

5–506. Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable.

5–507. The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3–304 of this order.

5–508. To the extent permitted by law and unless such documentation is withheld pursuant to section 6–601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

Sec. 6–6. *Exemption.*

6–601. In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order.

Sec. 7–7. *General Provisions.*

7–701. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
August 3, 1993.

[FR Doc. 93–19069
Filed 8–4–93; 4:37 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

INTERSTATE COMMERCE COMMISSION

5 CFR Chapter XL

49 CFR Part 1000

RIN 3209–AA00, 3209–AA04, and 3209–AA15

[Ex Parte No. 515]

Supplemental Standards of Ethical Conduct For Employees of the Interstate Commerce Commission

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the ICC that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE in order to provide for a successful ICC ethics program. The ICC also is repealing its Canons of Conduct that were superseded by these standards.

EFFECTIVE DATE: These regulations are effective August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927–6317 (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006–35067). Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, 5 CFR 2635.105 authorizes agencies to publish agency-specific supplemental regulations that are necessary properly to implement their respective ethics programs. The ICC, with OGE's concurrence, has determined that the following supplemental rules, which will now appear in new 5 CFR chapter XL, are necessary to the success of its ethics program.

II. Analysis of the Regulations

Section 5001.101 General

Section 5001.101 explains that the regulations contained in the final rule apply to all ICC employees, including members of the Commission, and are supplemental to the executive branch-wide standards. Members and employees of the Interstate Commerce Commission also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations regarding their conduct published by the agency at in 49 CFR part 1019.

Section 5001.102 Prohibited Interests in For-hire Transportation Companies

5 CFR 2635.403(a) specifically authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees based on the determination that the acquisition or holding of such interests would cause reasonable persons to question the impartially and objectivity with which agency programs are administrated. In its Canons of Conduct, the ICC traditionally has prohibited its employees from holding any employment or other official relationship with, or owning securities of, or being otherwise pecuniarily interested in, any for-hire transportation company. For members of the Commission and certain other personnel, these prohibitions are prescribed by 49 U.S.C. 10301(d) and 10306(e). By 49 CFR 1000.735–13, which is being repealed by this final rule, the ICC extended these prohibitions to all ICC personnel in order to ensure public confidence in the integrity of its programs and operations. New § 5001.102 is a restatement and continuation of this standard.

Section 5001.103 Impartiality Determinations Involving Members of the Interstate Commerce Commission

The Commission, in its "Additional Canons of Conduct for Members", at 49 CFR 1000.736–5, which is being repealed by this final rule, has provided that "If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualifications." Under 5 CFR 2635.502(d), however, such determinations are ultimately to be made by the "agency designee" who, at the ICC, is the Designated Agency Ethics Official (DAEO). Except in the case of the Chairman, the definition of "agency designee" at 5 CFR 2635.102(b) would preclude a member of the Commission from serving as the agency designee for the purposes of making any determination regarding his or her own conduct.

Traditionally, judges act upon motions to recuse themselves from cases which have been assigned to them. Because Commissioners perform quasi-judicial functions when voting in ICC adjudicatory proceedings, the ICC believes that it would be inappropriate for any person other than the Commissioner to determine whether or not he or she should be disqualified from performing any of these functions on impartiality grounds. In effect, § 5001.103 modifies the definition of "agency designee" to enable the ICC to delegate authority, and, in fact, constitutes a delegation of authority to each member of the Commission to serve as his or her own agency designee, in consultation with the Designated Agency Ethics Official, for the purposes of making the impartiality determination contemplated by 5 CFR 2635.502(d) in relationship to ICC proceedings.

Section 5001.104 Approval for Outside Employment

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. An ICC Canon of Conduct, 49 CFR 1000.735–17, which is being repealed by this final rule, has required such advance authorization. While new § 5001.104 is intended to continue that requirement, it differs from the ICC's old Canon because it requires prior approval only of outside employment. However, a definition of "employment" has been added to clarify the nature of the activities that are subject to this

requirement, and it is general enough to include those undertakings referenced in the Commission's Canon. This language also helps to ensure that determinations to approve or disapprove outside employment are not made arbitrarily, but on the basis of standards stated in applicable statutes, the new OGE regulations and this supplemental regulation. In order to centralize all ICC ethics functions, responsibility for approval of outside employment is transferred from the Director of Personnel to the DAEO.

The ICC believes that this prior approval requirement is necessary to ensure that any problems relating to an employee's outside employment are resolved before an employee begins such an undertaking.

III. Repeal of the ICC Canons of Conduct

Because the Commission's Canons of Conduct have been largely superseded by the new executive branch standards of ethical conduct and financial disclosure regulations, 5 CFR parts 2634 and 2635, the Commission herewith is repealing existing subparts B, C, and D of 49 CFR part 1000. By a separate rulemaking being published simultaneously with this part, the Commission has incorporated provisions regarding use of intoxicants and sexual harassment, which had been contained in repealed subpart B, into a new part 1019 of title 49 of the Code of Federal Regulations.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

The ICC has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the Canons of Conduct, and the ICC believes that it is important to a smooth transition from the Commission's Canons to the executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to the ICC's organization, procedure and practice.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only ICC employees.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

5 CFR Part 5001

Conflict of interests, Government employees.

49 CFR Part 1000

Administrative practice and procedure, Seals and insignia.

Decided: June 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Approved: July 29, 1993.

Signey L. Strickland, Jr.,

Secretary.

Approved: August 2, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Interstate Commerce Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 49, chapter X, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter XL, consisting of Part 5001, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XL—INTERSTATE COMMERCE COMMISSION

PART 5001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INTERSTATE COMMERCE COMMISSION

Sec.

5001.101 General.
5001.102 Prohibited financial interests in for-hire transportation companies.
5001.103 Impartiality determinations for members of the Interstate Commerce Commission.
5001.104 Approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 10301, 10306, 10321; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. at 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., at 306; 5 CFR 2635.105, 2635.403, 2635.803.

§ 5001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Interstate Commerce Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and and this part, members and other employee are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2635 and to additional regulations regarding their conduct contained in 49 CFR part 1019.

§ 5001.102 Prohibited financial interests in for-hire transportation companies.

(a) *General prohibition.* Except as provided in paragraph (c) of this section, no member or other employee of the Interstate Commerce Commission shall, directly or indirectly:

(1) Be employed by or hold any other official relationship with any for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(2) Own securities of or be in any manner pecuniarily interested in any for-hire transportation company whether or not subject to the Interstate Commerce Act.

(b) *Indirect relationships and interests.* (1) For the purposes of paragraph (a) of this section, an indirect relationship with or interest in a for-hire transportation company includes, but is not limited to, an interest in:

(i) Any company that owns or controls and has more than two percent of its assets directly invested in or dervices more than two percent of its income directly from a for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(ii) Any company, mutual fund or other enterprise which has an interest of more than ten percent of its assets directly invested in or derives more than ten percent of its income directly from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

(2) For the purposes of determining the applicability of this paragraph, an employee may rely on the most recent financial statement issued to its security holders by the company, fund or other enterprise.

(c) *Exceptions.* (1) Where a previously proper holding of a member or other employee becomes prohibited because

of the enterprise's acquisition of an interest in a for-hire transportation company, the employee shall have nine months within which to dispose of the interest.

(2) In cases of financial hardship where the relationship or interest is not prohibited by 49 U.S.C. 10301(d) or 10306(e), the Designated Agency Ethics Official may grant a written waiver of the prohibition in paragraph (a) of this section based on a determination that application of the prohibition is not necessary to ensure public confidence in the impartiality and objectivity with which the Commission's programs are administered or to avoid a violation of part 2635 of this title.

§ 5001.103 Impartiality determinations for members of the Interstate Commerce Commission.

A member is an "agency designee" for the purposes of making an impartiality disqualification determination under 5 CFR 2635.502(d) with respect to the member's own participation in a Commission proceeding. This determination must be made in consultation with the Designated Agency Ethics Official.

§ 5001.104 Prior approval for outside employment.

(a) Before engaging in any outside employment, whether or not for compensation, an employee of the Interstate Commerce Commission, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Official (DAEO). Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include, at a minimum, the following:

(1) A statement of the name of the person, group, or other organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment;

(2) The employee's certification that the outside employment will not depend in any way on information obtained as a result of the employee's official Government position;

(3) The employee's certification that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

(4) The employee's certification that he or she has read, is familiar with, and will abide by the restrictions contained in all applicable Federal laws and regulations, including those found in 18 U.S.C. chapter 11 and those found or referenced in subpart H ("Outside Activities") of 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(5) The written approval of the employee's immediate supervisor.

(b) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

(c) For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. Prior approval is not required, however, to participate in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for expenses.

49 CFR CHAPTER X—INTERSTATE COMMERCE COMMISSION

PART 1000—THE COMMISSION

2. The authority citation for part 1000 continues to read as follows:

Authority: 49 U.S.C. 10303, 10321, 11144, and 11145.

3. Part 1000 is amended by removing subparts B, C and D.

[FR Doc. 93–18871 Filed 8–5–93; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–93–001]

RIN 0581–4475

User Fees for Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is making final the decrease in user fees charged to cotton growers from $1.92 per bale to $1.87 per bale for cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987.

In addition, AMS will eliminate the cotton linters standards and the classification service for cotton linters. There has been virtually no demand for official linters classification services in recent years. The cost of maintaining the cotton linters standards is no longer justified.

This action also eliminates manual classification services for American Pima cotton. Since the quality data that is provided under manual classification is now provided as part of the High Volume Instrument (HVI) classification service, it has been determined that there is no practical reason to continue to provide manual classification as a separate service.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–3193.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revision in fees and the elimination of cotton linters standards and manual classification service for American Pima Cotton was published on June 10, 1993, in the **Federal Register** (58 FR 32454). A 15-day comment period was provided for interested persons to respond to the proposed rule; one comment was received.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Acting Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) the fee decrease reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost decrease will not affect competition

in the marketplace; and (3) the use of classification services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The revision of the user fee paid by cotton growers for cotton classification services and the elimination of manual classification services for American Pima cotton will become effective upon publication in the **Federal Register**. The elimination of the cotton linters standards and the cotton linters classification services, will become effective one year after the date on which the final rule is published, as provided by the Cotton Standards Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.92 per bale during the 1992 harvest season as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including administrative and supervisory costs.

The establishment of standards and the preparation and maintenance of standards are necessary for providing grower classification services. The revised fees include seven cents per bale to recover standardization costs, including standards which must be freshly prepared each year. These costs must be recovered by the user fees charged to growers for cotton classification services because it is anticipated that they will no longer be covered by appropriated funds beginning on October 1, 1993.

This final rule establishes the user fee charged to producers for High Volume Instrument (HVI) classification at $1.87 per bale during the 1993 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1992. Therefore, the 1993 producer's user fee for classification service is based on the 1992 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1992 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $1.86 per bale. A 2.5 percent, or five cents per bale increase due to the implicit price deflator of the gross domestic product added to the $1.86 resulted in a 1993 base fee of $1.91 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1993 crop is estimated at 16,386,442. The 1993 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 29 cents per bale reduction and was subtracted from the 1993 base fee of $1.91 per bale, resulting in a fee of $1.62 per bale.

The formula requires addition of a five cents per bale surcharge to the $1.62 per bale fee since the projected operating reserve would be less than 25 percent. The five cent surcharge resulted in a 1993 season fee of $1.67 per bale. Assuming a fee of $1.67, the projected operating reserve would be 1.4 percent. An additional 20 cents per bale was required to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This establishes the 1993 season fee at $1.87 per bale.

This rule also eliminates manual classification services for American Pima cotton. Since the quality data that is provided under manual classification (grade, staple, and micronaire) is now provided as part of the HVI classification service, it has been determined that there is no practical reason to continue to provide manual classification as a separate service.

Accordingly, in § 28.909, paragraphs (b) and (c) are revised to reflect the decrease in the HVI classification fees and the elimination of manual classification service for American Pima Cotton.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount is continued to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(d).

Growers or their designated agents will continue to incur no additional fees if only one method of receiving classification data is requested. The fee for each additional method of receiving classification data in § 28.910 remains at five cents per bale, and it is applicable even if the same method is requested. Punched computer cards will still be used for the dissemination of classification data, but bar coded, printed cards will no longer be available, because there is an insufficient demand for the use of this method. This change is reflected in § 28.910 (a). The other provisions of § 28.910, concerning the fee for an owner receiving classification data from the central database and the fee for new classification memoranda issued for the business convenience of such an owner without reclassification of the cotton, remain the same.

The fee for review classification in § 28.911 is decreased from $1.92 per bale to $1.87 per bale. The fee for returning samples after classification in § 28.911 remains at 40 cents per sample.

Discontinuation of the Cotton Linters Standards and Classification Services Under the U.S. Cotton Standards Act

The demand for cotton linters classification and cotton linters standards offered under the U.S. Cotton Standards Act has diminished in recent years to the point where the industry demand is practically nil and does not justify the cost of preparing and maintaining the linters standards and providing the linters classification service.

One comment concerning the proposed rule was received from a national farm industry organization. The commenter expressed support for the rule as proposed.

Accordingly, § 28.2 (n) and (j) are revised to remove the cotton linters references, and 28.2 (o) is deleted. References to the classification of cotton linters are also be removed from §§ 28.9, 28.122 and 28.175. The subheading "United States Cotton Linters", which appears before § 28.136 is deleted, as is all of the sections under it.

The heading *Subpart B—Classification for Foreign Growth Cotton and Cotton Linters* and § 28.175 are revised to remove the words "* * * and cotton linters". General information on linters classification services, § 28.184, is deleted, as is the subheading "Official Cotton Linters Standards of the United States for

Grade", which appears before § 28.201, as is all of the sections under it. The subheading "Official Cotton Linters Standards of United States for Staple", which appears before § 28.215, is removed, as is all of the sections under it.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the **Federal Register** because regulatory revision of the user fees in this regulation are required by the Act governing the services and the effective date for the new fees is intended to coincide with the beginning of the harvest of new crop cotton, as provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. Accordingly, this rule is made effective on August 6, 1993.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton linters, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

Subpart A—[Amended]

1. The authority citation for subpart A of part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. In § 28.2, paragraph (o) is removed, paragraphs (p) through (v) are redesignated (o) through (u), and paragraphs (j) and (n) are revised to read as follows:

§ 28.2 Terms defined.

* * * * *

(j) *Quality Control Section.* The national classing supervision office at Memphis, Tennessee performing final review of cotton classification.

* * * * *

(n) *Cotton.* The word *cotton* means cotton of any variety produced within the continental United States. In this subpart, for administrative convenience the word "cotton" is used to signify vegetable hair removed from cottonseed in the usual process of ginning.

* * * * *

3. Section 28.9 is revised to read as follows:

§ 28.9 Inspection; sampling; classification.

The inspection, sampling, and classification of cotton in the United States pursuant to the Act shall be performed as prescribed in this subpart. Subject in general to the provisions of this subpart the Director may issue from time to time instructions for the sampling, classification, and issuance of classification memoranda for cotton classed for special programs and other Government agencies, including the review of any classification performed pursuant to §§ 28.901 through 28.919.

4. Section 28.122 is amended by revising the first sentence to read as follows:

§ 28.122 Fee for practical classing examination.

The fee for the practical classing examination for cotton shall be $105.00.

* * *

§§ 28.136–28.151 [Removed]

5. The undesignated center heading *United States Cotton Linters,* and §§ 28.136 through 28.151 under that heading are removed.

Subpart B—[Amended]

6. The authority citation for subpart B of part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

7. The subpart heading for subpart B of part 28 is revised to read as follows:

Subpart B—Classification for Foreign Growth Cotton

8. Section 28.175 is revised to read as follows:

§ 28.175 Administrative and general.

Insofar as applicable, and not inconsistent with this subpart, the provisions of subpart A of this part shall likewise apply to the classification and comparison of cotton produced outside the continental United States.

§ 28.184 [Removed]

9. Section 28.184 is removed.

Subpart C—[Amended]

10. The authority citation for the undesignated center heading preceding §§ 28.301 to 28.307 in Subpart C is revised to read as follows:

Authority: Sections 28.301 to 28.307 issued under Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply sec. 6, 42 Stat. 1518, as amended, sec. 4854, 68A Stat. 580; 7 U.S.C. 56, 26 U.S.C. 4854.

§§ 28.215–28.222 [Removed]

11. In Subpart C—Standards, the undesignated center heading, its authority citation, and its Sections 28.201 through 28.208 and the undesignated center heading, its authority citation and its §§ 28.215 through 28.222 are removed.

Subpart D—[Amended]

12. The authority citation for subpart D of part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

13. In § 28.909, paragraph (b) is removed, paragraph (c) is redesignated as (b) and revised to read as follows, paragraph (d) is redesignated as (c):

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.87 per bale.

* * * * *

14. In § 28.910, paragraph (a) is amended by removing (a)(5), and the introductory text of paragraph (a) and (a)(1) through (a)(4) is revised to read as follows (the concluding text of paragraph (a) remains unchanged):

§ 28.910 Classification of samples and issuance of classification data.

(a) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(1) Computer punchcards,

(2) Computer diskettes,

(3) Computer tapes, or

(4) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

* * * * *

15. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.87 per bale.

* * * * *

Dated: August 2, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18868 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD36

Upland Cotton Adjusted World Price—Coarse Count Adjustment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations to update the list of upland cotton qualities eligible for the coarse count adjustment. This change is required to conform with revisions made in the grade standards for the 1993 and future crops of upland cotton. This action is authorized by section 103B of the Agricultural Act of 1949 (1949 Act), as amended. The effect of the amendment is to make the qualities that were eligible for the coarse count adjustment under the old grading system eligible under the new grading system.

DATES: Effective August 1, 1993. Comments must be received on or before September 7, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FRAD, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State, or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

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

Environmental Evaluation

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

Federal Assistance Program

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

Executive Order 12778

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

Executive Order 12372

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

Paperwork Reduction Act

This amendment will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to these amendments.

Background

Starting with the 1993 marketing year, the schedule of CCC loan premiums and discounts for U.S. upland cotton will express the former "grade" as separate color grade and leaf components. As a result, terms previously used to describe certain upland cotton qualities have changed. Section 1427.25(f)(1) is amended to clarify which qualities of upland cotton are eligible for the coarse count adjustment beginning with the 1993 marketing year. The effect of the amendment is to make the qualities that were eligible for the coarse count adjustment under the old grading system eligible under the new grading system.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 7, 1993, in order to be assured of consideration.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and record-keeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2, 15 U.S C. 714b and 714c.

2. Section 1427.25(f)(1) is revised to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price (AWP) for upland cotton.

* * * * *

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c) of this section, shall be subject to further adjustments as provided in this section with respect to all qualities of upland cotton eligible for price support loan except the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5,

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2.

(ii) Grade and Staple length must be determined in accordance with § 1427 9 If no such official classification is presented, the coarse count adjustment shall not be made.

* * * * *

Signed at Washington, DC on July 28, 1993

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–18865 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–05–P

7 CFR Part 1435

RIN 0560–AC14

Sugar and Crystalline Fructose Marketing Allotment Appeal Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) previously published an interim rule on July 6, 1993, pertaining to the establishment of marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996. This interim rule supplements the previously published interim rule by setting forth the appeal procedures as required by section 359i of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended.

DATES: This interim rule is effective August 5, 1993. Comments must be received on or before September 7, 1993, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to the Deputy Administrator for Program Analysis (DAPA), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in room 3727, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, ASCS; telephone: 202–720–3391.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

The Department has reviewed this action under Executive Order 12291 and Departmental Regulation 1512–1. It has been determined that this action will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individuals, industries, Federal, State, local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "nonmajor."

Federal Assistance Program

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

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Dates" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

It has been determined that this regulation will have no significant impact on a substantial number of small entities because the particular marketing allotment options considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains reporting requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection requirements will be submitted to OMB for review.

Environmental Evaluation

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

Background

CCC previously published the regulations (58 FR 36120, July 6, 1993) applicable to the establishment of marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996. This interim rule supplements the previously published interim rule by adding § 1435.530 setting forth the appeal procedures applicable to § 1435.529(a) as required by section 359i of the 1938 Act, as amended.

List of Subjects in 7 CFR Part 1435

Administrative practice and procedures, Appeals, Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended as follows:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 1421 1423, 1446g, 15 U.S.C. 714b and 714c.

2. Section 1435.530 is added to read as follows:

§ 1435.530 Appeals procedures.

(a) *Reconsideration*—(1) *Basis, purpose, and applicability.*

(i) The regulations set forth in this section are applicable only to requests for reconsideration and appeals arising under § 1435.529(a).

(A) The regulations in this section also prescribe the rules and procedure that may be followed by a person who seeks reconsideration of a determination made with respect to:

(*1*) Processors who disagree with the amount of allocation assigned by CCC pursuant to § 1435.529(a)(1);

(*2*) Producers who disagree with a determination with respect to the establishment or adjustment of proportionate shares or acreage bases or excess acreage harvested pursuant to § 1435.529(a)(2); and

(B) The regulations in this section also prescribe the rules and procedure that must be followed by a person who seeks reconsideration with respect to: Producers or processors who disagree with the arbitrator's decision regarding the sharing of the processor's allocation with the producers pursuant to § 1435.529(a)(3).

(ii) Reconsideration and review under this section is limited to individual determinations made with respect to those persons meeting the requirements of paragraph (a)(1)(i) of this section. Accordingly, there is no review under this section with respect to general

program requirements that are applicable to all program participants.

(2) *Definitions.*

Appeal means a written request by a participant asking the next level reviewing authority to review an adverse determination.

CCC means Commodity Credit Corporation, a wholly-owned Government corporation within the USDA.

Director means the director of NAD, or a designee.

Hearing means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

Hearing Clerk means the Hearing Clerk, USDA, Washington, DC 20250.

Hearing Officer means an individual who is designated by the Director and assigned the responsibility of conducting the NAD hearing for the appeal filed by the participants with the Executive Vice President, CCC, or other appropriate official in accordance with this part.

Judicial Officer means an officer of the United States Department of Agriculture, delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, Section 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

Judge means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

NAD means the National Appeals Division, the ASCS division designated by the Executive Vice President of CCC to hear and review producer and processor appeals under this part.

NAD Hearing means an informal proceeding before a Hearing Officer of NAD to afford a participant the opportunity to present testimony or documentary evidence to show why an adverse determination was not proper.

Participant means any person whose right to participate in, or receive payment or other benefits in accordance with, any of the programs to which these regulations apply who is affected by a determination of the Secretary, the Executive Vice President of CCC, or an Administrative Law Judge. An authorized representative of the participant shall be considered the participant.

Reconsideration is a subsequent consideration of a prior determination by the Executive Vice President, or a designee.

(3) *Stay of collection.* The filing of a timely notice of a request for reconsideration or appeal shall automatically stay the action of ASCS to collect any penalties assessed under this part until a decision is reached on the acceptability of the reconsideration or appeal, and in the case of an acceptable appeal, until final administrative determination has been issued. However, during the stay, interest will accrue on the outstanding penalty amount at a rate equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the penalty is assessed.

(4) *Consolidated hearings.* At the discretion of the Hearing Officer or Judge, hearings on two or more petitions may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record. If the Hearing Officer or Judge elects to consolidate the hearings, the parties shall be notified prior to the date set for the hearing.

(5) *Request for extension of time.* No request for extension of time shall be granted under this subpart unless otherwise specified.

(6) *Request for reconsideration*—(i) *Address for request for reconsideration or appeal.* Any participant who believes that a proper determination, pursuant to § 1435.529(a)(1) or (2), has not been made in accordance with applicable program regulations or that all of the facts were not considered with respect to any determination made by the Secretary, may request a reconsideration of such determination and a NAD hearing by filing a request for reconsideration with the Executive Vice President, CCC, or a designee, prior to an appeal to a Judge. However, participants who wish to contest an arbitration determination under § 1435.529(a)(3) must file a request for reconsideration prior to filing an appeal with a Judge. Any participant who elects not to request reconsideration of a determination pursuant to § 1435.529(a)(1) or (2) may appeal directly to the Judge. A request for reconsideration will toll the time for filing an appeal.

(ii) *Time limitations for filing requests for reconsideration.* (A) A request for reconsideration by a participant from any determination shall be filed within 15 calendar days after written notice of the determination is mailed to or otherwise made available to the participant. A request for reconsideration shall be considered to have been "filed" when personally delivered to the Executive Vice President, CCC, room 3086, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., P.O. Box 2415 Washington, DC 20013–2415, or when postmarked.

(B) Whenever the final date for filing a request for reconsideration prescribed in paragraph (a)(6)(ii)(A) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal work hours, the time for filing shall be extended to the close of business on the next workday.

(C) A request for reconsideration may be accepted and acted upon even though it is not filed within the time prescribed in this section if, in the judgement of the Hearing Officer with whom such request is made, the circumstances warrant such action.

(iii) *Form of request for reconsideration.* Each request for reconsideration shall be in writing and signed by the participant or by an authorized representative of the participant. Each request for reconsideration shall be supported by a written statement of facts and any other materials to support the participant's position. Such materials must be submitted with, or as part of the request for reconsideration, or within 15 calendar days or receipt of the determination. The request for reconsideration may be accompanied by a request for a NAD hearing. If a request for a NAD hearing is not submitted within 15 calendar days of the receipt of the determination, the Director shall make a recommendation to the Executive Vice President, CCC, on the basis of the material that was made available in making the prior determination and the material submitted by the participant.

(iv) *Nature of the NAD hearing.* (A) The hearing shall be held at the time and place designated by the Director.

(B) The hearing shall be conducted by the Director in the manner deemed most likely to obtain the facts relevant to the matter at issue. The participant shall be advised of the issues involved. The Director may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(C) The participant, or an authorized representative of the participant, shall be given full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. The Director may require that evidence be submitted

in written form or may restrict the number of witnesses testifying. Further, the Director may request or permit persons other than those appearing on behalf of the participants to present information or evidence at such hearing and, in such event, may permit the participant to question such person.

(D) The Director shall prepare a written record containing a clear, concise statement of the facts as asserted by the participant and material facts found by the Director. The names of interested persons appearing at the hearing shall be included. A verbatim transcript shall be made if:

(*1*) The participant requests at a reasonable period of time prior to the time the NAD hearing begins that the Director provide for such a transcript and agrees to pay the expense thereof, or

(*2*) The Director determines that such a transcript is appropriate.

(E) If, at the time scheduled for the NAD hearing, the participant is absent and no appearance is made on behalf of the participant, the Director shall, after a reasonable time conclude the NAD hearing, or may, at its discretion, accept information and evidence submitted by other persons present at the NAD hearing.

(v) *Determination.* (A) The Director, prior to making a recommendation to the Executive Vice President, CCC, may request the participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review, and within program authorities, the Director may recommend affirmance, modification, or reversal of any determination made initially as deemed appropriate. Recommendations by the Director shall be submitted to the Executive Vice President, CCC, for final approval. The participant shall be notified in writing of the determination of the Executive Vice President, CCC. The notification shall clearly set forth the basis for the determination. Each other person affected by the determination shall be notified in writing of the determination.

(B) When the participant requests copies of documents, information, or evidence which will form the basis of the determination, copies of such documents, information, or evidence shall be made available as provided in 7 CFR part 798.

(*7*) *Delegation of authority.* Nothing contained in these regulations in this part shall preclude the Administrator, ASCS, or the Executive Vice President, CCC, or a designee from determining at any time any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determination made by the Hearing Officer.

(b) *Appeals*—(1) *Appeal of determination to the Administrative Law Judge.*

(i) *Exhaustion of administrative remedies.* Participants requesting reconsideration or appeal pursuant to § 1435.529(a) must exhaust their administrative remedies before filing suit in the Federal District Courts.

(ii) *Procedure for hearing*—(A) *Time limitations for filing an appeal.*

(*1*) An appeal by a participant from a determination of the Executive Vice President, CCC, shall be filed within 20 days with the Hearing Clerk after written notice of the determination is mailed to or otherwise made available to the participant. An appeal shall be considered to have been "filed" when personally delivered to the appropriate office or when postmarked.

(*2*) A copy of the appeal shall be mailed by the participant to the Executive Vice President, CCC, or a designee. Within 10 days after receipt of the appeal, the Executive Vice President, CCC, or a designee, shall mail notices to all affected parties informing them that an appeal has been filed and that they have the right to intervene in the action. Those parties who elect to intervene shall file a notice with the Hearing Clerk within 5 days after receipt of the notice of appeal.

(*3*) Whenever the final date for filing an appeal prescribed in paragraph (b)(1)(i)(A)(*1*) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal work hours, the time for filing shall be extended to the close of business on the next work day.

(*4*) An appeal may be accepted and acted upon even though it is not filed within the time prescribed in this section if, in the judgement of the Judge with whom such request is made, the circumstances warrant such action.

(B) *Form of request for an appeal.* Each request for appeal shall be in writing and signed by the participant or by an authorized representative of the participant. Each appeal shall be supported by a written statement of facts and argument providing the basis for the appeal. The appeal may be accompanied by a request for a hearing.

(C) *Answer*—(*1*) *Filing and service.* Within 20 days after service of the participant's appeal petition, CCC shall file an answer signed by the Executive Vice President, CCC, or an authorized representative, or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(*2*) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(*i*) Clearly set forth any defense asserted by CCC; or

(*ii*) State that CCC admits all the facts alleged in the appeal petition; or

(*iii*) State that CCC admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(*3*) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation.

(D) *Procedures upon failure to file an answer.* The failure by CCC to file an answer shall constitute a waiver of hearing. Upon such failure to file, the participant shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon CCC by the participant. Within 20 days after service of such motion and proposed decision, CCC may file objections. If the Judge finds that meritorious objections have been filed, the participant's motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of participant's motion shall be served on each of the parties and shall be included as part of the administrative record. Where the decision as proposed by the participant is adopted as the Judge's initial decision, such decision of the Judge shall become final and effective 30 days after service.

(E) *Withdrawal of appeal.* At any time before the Judge files an initial decision, the participant may withdraw its appeal, however, the participant is responsible for any penalties and interest that has accrued. By withdrawing an appeal, the participant waives all further opportunity to appeal or seek review by the Judicial Officer or by a Federal court on the claim or related matters.

(F) *Prehearing conference and procedure*—(*1*) *Time and place.* The Judge shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the USDA, Washington, DC. Reasonable notice of

the time and place of the prehearing conference, and if personal attendance will be necessary, shall be given. The Judge shall order each of the parties to provide at the prehearing conference, or at another time prior to the hearing, the following:

(*i*) An outline of the appeal or defense;

(*ii*) The legal theories upon which the party will rely;

(*iii*) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(*iv*) A list of witnesses who will testify on behalf of the party. With permission of the Judge, the names of the witnesses need not be provided if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(*2*) *Procedures.* The Judge shall not order any of the foregoing procedures if a party can show such procedures are inappropriate or unwarranted under the circumstances of the particular appeal.

(*3*) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(*i*) The simplification of issues;

(*ii*) The necessity of amendments to pleadings;

(*iii*) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(*iv*) The limitation of the number of expert or other witnesses;

(*v*) Negotiation, compromise, or settlement of issues;

(*vi*) The exchange of copies of proposed exhibits;

(*vii*) The identification of documents or matters of which official notice may be requested;

(*viii*) A schedule to be followed by the parties for the completion of the actions decided at the conference;

(*ix*) The possibility of obtaining stipulations regarding the type of evidence and number of witnesses to be presented at the hearing; and

(*x*) Such other matters as may expedite and aid in the disposition of the appeal.

(*4*) *Reporting.* (*i*) A prehearing conference will not be stenographically reported unless so directed by the Judge.

(*ii*) Any party to the appeal may petition the Judge to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the Judge and to the other parties to the appeal.

(*5*) *Attendance at prehearing conference.* In the event the Judge concludes that personal attendance by the Judge and the parties or counsel at a prehearing conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the Judge may conduct such conference by telephone.

(*6*) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the Judge concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

(G) *Transmittal of the record.* Whenever a party files a petition appealing the decision of the Executive Vice president, CCC, and a response has been filed or the time for filing a response has expired, the Director of NAD, or a designee, shall transmit the administrative record to the Judge.

(H) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(I) *Evidence—*(*1*) *In general.* (*i*) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross examination.

(*ii*) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(*iii*) After a witness called by the participant has testified on direct examination, any other party may request and obtain the production of any statement, or any part thereof, of such witness, in the possession of the participant, which relates to the subject matter about which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(*iv*) Evidence which is immaterial, irrelevant, unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(*2*) *Objections—*(*i*) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to the ruling of the Judge, the party shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the judge.

(*ii*) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(*3*) *Exhibits.* Unless the Judge finds that the providing of copies is impracticable, four copies of each exhibit shall be filed with the Judge: *Provided,* That, where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party. A true copy of the exhibit may be substituted for the original.

(*4*) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated. Such record or document shall be evidenced by an official publication or by a copy certified by the person having the legal authority to make such certification.

(*5*) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Provided, That the parties shall be given adequate notice of the matter so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(*6*) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted into the hearing record. In either event, the evidence shall be considered a part of the transcript and hearing record if the Judicial Officer, upon appeal, decides the Judge's ruling excluding evidence was erroneous and prejudicial. If the Judicial Officer decides the Judge's ruling was erroneous and prejudicial, and that it would be inappropriate to have such evidence part of the hearing record, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(J) *Debarment of attorney or representative.* (*1*) Whenever an Judge finds that a person acting as attorney or designated representative for any party

to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the Judge may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer; Provided, That the Judge shall suspend the appeal of the claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(K) *Failure to appear.* (1) If either party, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's initial decision, or to seek review by the Judicial Officer in accordance with § 1435.530(a)(6).

(L) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one copy to be provided to the Judge and each of the other parties to the appeal. At such time the hearing is scheduled, the Hearing Clerk shall order the transcript.

(iii) *Post-hearing procedure*—(A) *Corrections to transcript.*

(1) Any party may file a motion proposing correction to the transcript within 5 days of its receipt.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description. The transcript shall be deemed to be certified without further action by the Judge.

(3) At any time prior to the filing of the Judge's initial decision and after consideration of any objections filed as to the transcript, the Judge may issue an order making any corrections in the transcript that the Judge finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(B) *Proposed findings of fact, conclusions, orders, and briefs.* Proposed findings of facts, conclusions, orders, and briefs shall be filed simultaneously by all parties at the close of the hearing or, at the Judge's discretion, no more than 5 days post hearing.

(C) *Judge's initial decision.* (1) The Judge within a reasonable time shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision, a copy of which shall be served upon each of the parties.

(2) Such initial decision shall become effective 30 days after service unless a motion for review by the Judicial Officer is sought pursuant to § 1435.530(a)(6).

(3) No decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal as prescribed in § 1435.530(a)(6).

(iv) *Judges*—(A) *Assignment.* No Judge shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the Judge's objectivity in the appeal.

(B) *Disqualification of Judge.* (1) Any party to the appeal may, by motion, request that the Judge withdraw from the appeal on one or more of the grounds set out in this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The Judge may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The Judge may withdraw from any appeal for any reason deemed by the Judge to be disqualifying.

(C) *Powers.* (1) Subject to review as provided elsewhere in this part, the Judge, in any assigned appeal, shall have the power to:

(*i*) Set the time and place of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(*ii*) Administer oaths and affirmations;

(*iii*) Summon and examine witnesses and receive evidence at the hearing;

(*iv*) Admit or exclude evidence;

(*v*) Hear oral argument on facts or law;

(*vi*) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(*vii*) Take all other actions authorized under these rules.

(2) The Judge may not rule upon the validity of Federal statutes or regulations.

(D) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other Judge.

(2) *Review by the Judicial Officer.* (i) *Filing of review petition.*

(A) Within 10 days after service of the Judge's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk.

(B) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(ii) *Response to review petition.* Within 10 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(iii) *Transmittal of the record.* Whenever a review petition of an Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal. Such record shall include: the pleadings, motions and requests filed and the rulings; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection; any documents or papers filed in connection with a prehearing conference; the Judge's decision; such exceptions, statements of objections and briefs in support and responses as may have been filed in the proceeding.

(iv) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear

personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(v) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition. Evidence will be limited to the administrative record, no new evidence may be presented.

(vi) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(vii) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(viii) *Submission of briefs.* By agreement of the parties, a brief may be submitted for decision, but the Judicial Officer may direct that the review be argued orally.

(ix) *Decision of the Judicial Officer on review.* (A) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(B) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim decided by the Judge under this part.

(C) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination for purposes of judicial review and contain a statement describing the right to seek judicial review.

(3) *Ex Parte communications*—(i) *Judge; Judicial Officer.* At no time prior to the issuance of the final decision shall the Judge or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the Judge or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(ii) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the Judge or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(iii) *Procedure.* (A) If the Judge or Judicial Officer receives an ex parte communication in violation of this section, the person who receives the communication shall place in the public record of the appeal or review:

(*1*) All such written communications;

(*2*) Memoranda stating the substance of all such oral communications; and

(*3*) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(B) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(iv) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

(4) *Form; filing; service; proof of service; computation of time; and extensions of time.*

(i) *Form.* (A) The original and two copies of all papers in a proceeding conducted under this part shall be filed with the Hearing Clerk.

(B) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(C) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(ii) *Filing.* Papers are considered filed when they are postmarked, or received, if hand-delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(iii) *Service.* A party filing a document with the Judge shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party

(iv) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(v) *Computation of time.* (A) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next workday.

(B) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(vi) *Extensions of time.* Requests for extensions of time shall be submitted to the Judge, Chief Judge, or the Judicial Officer prior to the expiration of the original due date. Except for the filing of a notice of appeal as required by § 1435.530(b)(2)(i), the time for the filing of any document or paper required or authorized under the rules in this part may be extended by the Judge, Chief Judge, or the Judicial Officer, if, in the judgment of the Judge, Chief Judge, or the Judicial Officer, there is good cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

(5) *Procedural matters*—(i) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(ii) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Signed the 30th day of July, 1993 in Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–18864 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 27400; Amendment No. 73–6]

Special Use Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; technical amendment.

SUMMARY: This action amends the office title of the Director, Air Traffic Operations Service, in the regulation that was affected by an agencywide reorganization. This change is necessary to make the regulation consistent with the current agency structure.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the FAA underwent a reorganization that affected both headquarters and regional offices. One result of the reorganization was a realignment of functions with a corresponding change in office names. Federal Aviation Regulation (FAR) § 73.19 (14 CFR 73.19) requires agencies using special use airspace to report their annual use of assigned restricted areas to the Director, Air Traffic Operations Service. The office with current responsibility for managing those reports, however, is the Director, Office of Air Traffic System Management. This technical amendment updates the rule to reflect the change in office name.

Because this action is merely a technical amendment reflecting the change in the name of an office, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists for making this amendment effective upon publication.

Further, the FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Air safety, Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

The Amendment

In consideration of the above, the FAA amends Part 73 of the FAR (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.19 [Amended]

2. In paragraphs (a) and (c) of § 73.19, remove the words "Director, Air Traffic Operations Service," and add, in their place, the words "Director, Office of Air Traffic System Management" in each paragraph.

Issued in Washington, DC, on August 2, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–18847 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Hearings

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of proposed amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments consist of Senate Bill 318, which revises the Kentucky Revised Statutes (KRS) with respect to conferences, hearings, civil penalties, and administrative review rights and procedures, and modifications to the Kentucky Administrative Regulations (KAR) at 405 KAR 7:001, 7:091, 7:092, 8:001, and 12:020 concerning the same topics. The amendments are primarily a State initiative, but they also satisfy OSM's 30 CFR part 732 notification to Kentucky dated November 14, 1991 (Administrative Record No. KY–1080), which required that the State amend its program to require prepayment of civil penalties into escrow as a prerequisite for administrative review. All changes are intended to either bring the State program into compliance with Federal requirements or improve the clarity and specificity of existing provisions.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: 606–233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Proposed Amendment

By letter dated July 28, 1992, (Administrative Record No. KY–1170) Kentucky submitted a proposed program amendment containing additions and modifications to 405 KAR 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001 and 24:001. The proposed amendment contained new procedures for

administrative hearings conducted under KRS Chapter 350.

OSM announced receipt of the proposed amendment in the September 23, 1992, Federal Register (57 FR 43949), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 23, 1992. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

By letter dated July 30, 1992 (Administrative Record Number KY–1171), Kentucky submitted a proposed program amendment containing seven pieces of legislation affecting KRS Chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly. Included in this proposed amendment was Senate Bill (S.B.) 318, which relates to conferences, hearings, civil penalties, and appeals. Inasmuch as the material covered by S.B. 318 is directly related to the regulatory revisions contained in the proposed amendment filed by Kentucky on July 28, 1992, S.B. 318 is being consolidated with that submission in this final rule.

OSM announced receipt of the amendment package containing S.B. 318 in the September 23, 1992, Federal Register (57 FR 43952), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 23, 1992. Since no one requested an opportunity to testify at a public hearing, the schedule, hearing was cancelled.

By letter dated September 18, 1992 (Administrative Record Number KY–1180), Kentucky submitted revised amendments to its administrative regulations at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, and 405 KAR 12:020. These revisions to the original program amendments submitted on July 28, 1992, were the result of comments received during a public hearing held by Kentucky on August 27, 1992.

OSM announced receipt of the proposed revisions in the December 9, 1992, Federal Register (57 FR 58169), and, in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed revisions to the original amendment. The comment period closed on December 24, 1992. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

By letter dated December 10, 1992 (Administrative Record Number KY–1202), Kentucky resubmitted its administrative hearings regulations as revised during the State's promulgation process. The resubmission included the final promulgation of regulation changes at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, 405 KAR 8:001 and 405 KAR 12:020 relating to hearings. In addition, those portions of Kentucky's original submission relating to regulation changes at 405 KAR 10:001, 405 KAR 12:001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001 were withdrawn.

OSM announced receipt of the resubmission dated December 10, 1992, in the January 14, 1993, Federal Register (58 FR 4384), and, in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed revisions to the original amendment. The comment period closed on January 29, 1993. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendments to the Kentucky program.

Revisions not specifically discussed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

A. Proposed Amendments to Kentucky's Revised Statutes (KRS)

1. Senate Bill 318, Section 1

Section 1 of S.B. 318 creates a new section in KRS Chapter 350, the State surface mining law, which sets forth the requirements for all hearings, other than conferences, held pursuant to KRS Chapter 350, including hearing officer qualifications, hearing report preparation and service, procedures for the filing of exceptions, identification of items to be considered in a final order, the rights of the parties to a hearing, and public participation in the hearing process. Except as noted below, these requirements, when read together with their implementing regulations, are similar to the Federal requirements concerning administrative review of agency actions in SMCRA; 30 CFR parts 775, 843 and 845; and 43 CFR part 4.

Section 1(3) of S.B. 318 states that "[A]ll hearings conducted pursuant to this chapter shall be open to the public except as may be ordered by the hearing officer." In a letter dated April 26, 1993 (Administrative Record No. KY–1217), OSM notified Kentucky that the exception clause rendered this provision less stringent than SMCRA. In a response dated May 7, 1993 (Administrative Record No. KY–1218), the Secretary of the Natural Resources and Environmental Protection Cabinet (NREPC or the Cabinet) stated that "the cabinet will propose to the 1994 General Assembly that the phrase 'except as may be ordered by the hearing officer' be deleted." Since this change has not yet been made, the Director is not approving the phrase "except as may be ordered by the hearing officer."

Paragraphs (3) and (4) of this section of the legislation direct or authorize the Cabinet to promulgate administrative regulations for (1) procedures for formal and informal hearings, (2) assessment and payment of civil penalties, (3) payment of a proposed penalty assessment into escrow prior to formal hearing, and the waiver of such penalty payment based on demonstrated inability to pay, and (4) procedures for holding administrative conferences. The regulations ultimately adopted in response to this mandate are discussed below in separate findings.

2. Senate Bill 318, Section 2

Section 2 of S.B. 318 creates a new section KRS Chapter 350 setting forth procedures whereby any person aggrieved by a determination of the Cabinet under KRS Chapter 350 may request a hearing; authorizing any person aggrieved by a final order of the Cabinet to appeal to the Franklin Circuit Court; and establishing procedures for filing and review of such appeals.

By letter dated April 26, 1993 (Administrative Record No. KY–1217), OSM requested clarification of a provision in paragraph (1) of this section which requires that the Cabinet serve written notice of a petition and schedule a hearing "unless the Cabinet considers that the petition is frivolous." In a response dated May 7, 1993 (Administrative Record No. KY–1218), Kentucky stated that by law it could not find a petition to be frivolous if the petition alleges that the Cabinet's determination is contrary to law or fact and injurious to the petitioner, and if it sets forth the reasons therefor. In addition, the State pointed out:

> If the petition does not conform to the requirements of the statute and regulation, the hearing officer, in a pretrial order, will require the filing of a more definite statement or an amended petition. The regulations also provide for a show cause proceeding prior to dismissal of any petition.

Finally, the State noted that this same requirement had been approved by the Secretary, in nearly identical form, in an October 22, 1980, final rule concerning the Kentucky program (45 FR 69964). Therefore, the Director finds that the provisions of Section 2 of SB 318, as clarified by Kentucky, are not inconsistent with the requirements of SMCRA or the Federal regulations.

3. Senate Bill 318, Section 3

Section 3 of S.B. 318 revises KRS 350.028(4) by requiring that the Secretary of the Cabinet issue an order to a permittee to show cause why the permit should not be suspended or revoked whenever the Secretary determines that a pattern of violations exists or has existed and that such violations are either willfully caused by the permittee or are the result of an unwarranted failure to comply. The Director finds that this proposal is substantively identical to and, therefore, no less stringent than, the corresponding portion of section 521(a)(4) of SMCRA.

4. Senate Bill 318, Section 5

Section 5 of S.B. 318 removes KRS 350.255(2) in its entirety. All of the provisions being deleted are included in one or both of the new sections being added to KRS Chapter 350 by Sections 1 and 2 of S.B. 318. Therefore, the Director finds that deletion of KRS 350.255(2) will not render Kentucky's program inconsistent with the requirements of SMCRA or the Federal regulations.

B. Proposed Amendments to Kentucky's Administrative Regulations (KAR)

1. 405 KAR 7:001 and 8:001—Definitions of Terms

(a) *New definitions.* Kentucky proposes to add definitions of the following terms to 405 KAR 7:001: Administrative hearing, final order, hearing officer, individual, initiating document, interim report, Office (for purposes of 405 KAR 7:091 and 7:092 only), and record. There are no Federal counterparts to these proposed definitions, except for the definition of "record", which the Director finds to be substantively identical to the Federal definition at 43 CFR 4.24(a)(1). However, the Director finds that each of these proposed definitions provides appropriate clarity and specificity to 405 KAR Chapter 7, and is not inconsistent with the requirements of SMCRA or the Federal regulations.

Kentucky also proposes to add a definition of "industrial/commercial lands" to 405 KAR 7:001 and 8:001. The definition as proposed is substantively identical to the Federal definition of this term at 30 CFR 701.5, and to the definitions of this term in 405 KAR 16:001, 18:001 and 20:001, which were previously approved by the Director on October 1, 1992 (54 FR 45295). Therefore, the Director finds the proposed definition to be no less effective than its Federal counterpart.

(b) *Definition of "Person".* As originally proposed in Kentucky's submission dated July 28, 1992 (Administrative Record Number KY–1170), the definition of "person" in 405 KAR 7:001, 405 KAR 8:001, 405 KAR 10:001, 405 KAR 12:001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001 was to be revised to include a reference to KRS 446.010(26), which provides that "person may extend and be applied to bodies-politic and corporations, societies, communities, the public generally, individuals, partnerships and joint stock companies." Kentucky made this revision in response to OSM's action on a previous program amendment, wherein Kentucky proposed to replace detailed definitions of eleven terms (including "person") in its regulations with cross-references to the statutory definitions of those terms set forth in KRS 350.010 and 350.450(4)(c). For the reasons set forth in finding B.1(c) at 57 FR 45299 (October 1, 1992) as quoted below, the Director deferred as decision on Kentucky's definition of "person":

> The definition of "person" currently set forth as 405 KAR 7:020 contains a reference to governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units. The Federal definition at 30 CFR 700.5 contains the same reference. Kentucky's statutory definition [at KRS 350.010] does not contain such reference. By letter dated July 20, 1992 (Administrative Record Number KY 1169), Kentucky stated that [it would] revise the definition in a program amendment to be submitted to OSM in the near future by adding a reference to KRS 446.010(26), which provides that the term "person" may extend and be applied to "bodies-politic." Therefore, the Director is deferring action on the proposal to replace the current regulatory definition of "person" with a reference to the statutory definition until the proposed program amendment discussed above is submtted and approved by OSM.

On December 10, 1992, Kentucky resubmitted its proposed amendment, incorporating regulation changes made during the promulgation process. One of these changes affected the definition of person. Kentucky removed the definition from 405 KAR 10:001, 405 KAR 12001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001, leaving the definition at 405 KAR 7:001 and 405 KAR 8:001. In addition, Kentucky revised the definition by removing the reference to KRS 446.010(26). Therefore, Kentucky has, in effect, not changed the definition from the proposed definition on which the Director deferred action on October 1, 1992, at 57 FR 45295.

The Director has determined that Kentucky's regulatory definition of person, to be no less effective than its Federal counterpart, must include reference to "governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units," as does the Federal definition at 30 CFR 701.5. On May 7, 1993 (Administrative Record No. KY–1218), in response to a letter from OSM dated April 26, 1993 (Administrative Record No. KY–1217), Kentucky acknowledged the difference between Kentucky's statutory definition and the Federal regulatory definition and stated that the Cabinet intends to propose that the 1994 General Assembly revise the statutory definition of "person" at KRS 350.010(9) to be consistent with the Federal regulations. Since this action has not yet been accomplished, the Director is not approving the proposed definitions of "person" at 405 KAR 7:001 section 1(63) and 8:001 section 1(78), and the deferral action published on October 1, 1992 (57 FR 45299), continues in effect. In addition, he is requiring that Kentucky revise its statutory definition of "person" in KRS 350.010(9) to be no less inclusive than the corresponding Federal definition at 30 CFR 700.5.

2. 405 KAR 7:091—General Practice Provisions

This proposed regulation sets forth hearing, notice and other procedural and due process provisions for administrative review of actions taken under the Kentucky program. Together with proposed regulation 405 KAR 7:092, which is discussed in finding B.3., it contains the substance of Kentucky's current hearings regulations (405 KAR 7:090), which are proposed for repeal in this amendment.

(a) *Proposed regulations that are substantively identical to existing regulations on hearings (405 KAR 7:090) in Kentucky's current program.*

405 KAR 7:091 Section	Subject	405 KAR 7:090 section
1	Applicability	1.
2	Construction	2.
3(1)(a)	Hearings generally.	5(8).

405 KAR 7:091 Section	Subject	405 KAR 7:090 section
3(1)(b)	Evidence	5(9).
3(5)	Hearing Officer's report.	5(12), (13).
3(6)	Secretary's order	5(14), (15), (17).
5	Service	6.
6(1),(2)	Administrative summons and public notice of hearing.	5(6).
10	Location of administrative hearings and penalty assessment conferences.	7.
11	Intervention and consolidation.	12.
12(1),(2)	Judicial review	14.

These proposed regulations are substantively identical to existing regulations in Kentucky's currently approved program. Minor revisions and additions have been made to add specificity, provide better procedural guidance, and improve clarity. None of these changes (such as specifying that personal service of documents may only be made on persons at least 18 years of age and requiring that service upon the Cabinet be accomplished by serving the Commissioner of the Department of Law) will adversely affect any Federal requirement or prevent Kentucky from properly implementing State counterparts to Federal requirements. Therefore, the Director finds that adoption of these proposed rules will not render the Kentucky program less effective than SMCRA and its implementing Federal regulations.

(b) *Proposed rules, not part of Kentucky's current hearings regulations, which are substantively identical to corresponding Federal regulations.*

405 KAR 7:091	Subject	43 CFR
3(2)	Hearing officer's duties.	4.1121(a).
3(3)	Prehearing conference.	4.1121(b).
3(4)	Summary disposition.	4.1125.
4(1),(2)	Standards of conduct.	4.27(b),(c).
5(4)	Service on all parties.	4.1109(b) - (d).
7(1)	Filing of documents.	4.22(a).
7(2)	Retention of documents.	4.22(c).
7(3)	Record address	4.22(d).
7(4)	Transcripts	4.23.
8(1) - (3)	Time	4.22(e), (f)(1), (f)(2).
9	Subpoenas	4.26(a).
12(3)	Remands from courts.	4.29.

Because these proposed regulations are identical in meaning to the corresponding Federal regulations at 43 CFR part 4, the Director finds that Kentucky's proposed rules are no less effective than the Federal rules and are in compliance with 30 CFR 840.15.

(c) *Proposed repeal of 405 KAR 7:090.* In Section 13 of 405 KAR 7:091, Kentucky proposes to repeal its current regulations on hearings at 405 KAR 7:090. The provisions of those regulations are being transferred to new 405 KAR 7:091 and 7:092, as well as to 405 KAR 12:020 sections 7(2) and (8), as discussed in findings B.2., B.3., and B.4.(b) herein. Since all pertinent provisions thus will remain in effect, the Director finds that the repeal of 405 KAR 7:090 will not render Kentucky's program inconsistent with any SMCRA-related Federal requirements.

3. 405 KAR 7:092—Administrative Hearings and Assessment Conferences

This proposed regulation sets forth civil penalty assessment procedures and specific administrative review rights and procedures pertinent to actions taken (or not taken) by the Cabinet. Together with proposed 405 KAR 7:091, which is discussed in finding B.2. above, it contains the substance of—and generally resembles—Kentucky's current hearings regulations at 405 KAR 7:090, which this amendment would replace. The two most significant changes from 405 KAR 7:090 would allow persons to appeal the fact of violation independent of the penalty assessment process and would replace the formal preliminary hearing process for review of proposed civil penalties with the less formal assessment conference process. Both changes align the revised Kentucky rules more closely to the corresponding Federal rules concerning enforcement actions and civil penalty assessments at 30 CFR 843.16, 845.18, and 845.20, which contain similar procedural requirements.

Kentucky proposed these two changes primarily in response to OSM's Part 732 notification to Kentucky dated November 14, 1991 (Administrative Record No. KY–1080), which required that the Commonwealth revise its regulations to restore the provision requiring prepayment of any proposed penalty into escrow as a prerequisite for formal administrative review of the penalty amount, as is required by section 518(c) of SMCRA. Prior to this amendment, the Kentucky program at 405 KAR 7:090 section 4(9) established prepayment into escrow as a prerequisite for second-level administrative review of either the fact of violation or the penalty amount. (No prepayment was required for a first-level administrative review, known as a preliminary hearing, of either the fact of violation or the proposed penalty.) Although OSM had previously found Kentucky's existing rule to be consistent with section 518(c) of SMCRA and other pertinent Federal requirements (see Comment No. 3, 53 FR 39260, October 6, 1988), the Kentucky Supreme Court, in *James D. Franklin, et al.* v. *NREPC*, Ky., 799 S.W.2d 1 (1990), subsequently invalidated its escrow prepayment requirements on several grounds, thus leaving the State program less stringent than SMCRA. The changes being approved in this rulemaking are intended to address the court's concerns while restoring the State program's consistency with SMCRA. Since the amendment reestablishes escrow prepayment requirements similar to those set forth in both section 518(c) of SMCRA and 30 CFR 845.19, the Director finds that Kentucky has satisfied the requirements placed on the State by the November 14, 1991, part 732 notification.

In addition to the major changes discussed above, Kentucky has replaced the term "permittee" in former 405 KAR 7:090 with the phrase "permittee, operator, or person" in the corresponding provisions of the rules being approved today. Since the enforcement and penalty assessment provisions of the Federal rules at 30 CFR Parts 843 and 845 apply to any responsible party, not just the permittee, the Director finds that the State's proposed change in terminology is consistent with SMCRA and the Federal regulations.

(a) *Proposed regulations that are substantively identical to existing regulations on hearings (405 KAR 7:090) in Kentucky's current program.*

405 KAR 7:092 section	Subject	405 KAR 7:090 section
2	Construction	2.
3(1)	Notification	3(1).
3(3) (a), (b)	Service	3(3)(a),(b).
4(1)(b)	Failure to file	3(4)(c).
4(2)	Service; public participation.	4(2).
4(4)	Report of conference officer.	4(5).
4(5)	Service of report	4(5).
4(7)	Failure to attend	3(4)(c).

405 KAR 7:092 section	Subject	405 KAR 7:090 section
4(9)	Who may request a hearing.	4(9), 5(2)(a)3.
4(10)	Failure to timely request.	4(10).
5(1)(a), (b)	Cabinet-initiated hearings.	4(9).
5(2)	Remedies	5(3)
13	Penalties	11.
14(2)–(5)	Costs and expenses.	13(1), (3)–(6).

With the exception of the rule restructuring and revisions needed to accommodate the changes discussed in the introductory paragraphs of finding B.3. above, these proposed regulations are substantively identical to existing regulations in Kentucky's currently approved program, which have previously been found to be consistent with Federal requirements. Other minor revisions and additions have been made to add specificity, provide better procedural guidance, and improve clarity. In addition, consistent with both State and Federal requirements concerning temporary relief (405 KAR 7:092 section 12 and section 525(c) of SMCRA, respectively), Kentucky has revised 405 KAR 7:092 section 13(2)(b) to delete the provision in former 405 KAR 7:090 section 11(2)(b) that suggested that, before granting temporary relief from an order ceasing mining, the Cabinet must find that the person requesting relief would suffer irreparable loss or damage from application of the abatement requirements of the order. None of these changes or rule reorganizations will adversely affect any Federal requirement or prevent Kentucky from properly implementing State counterparts to Federal requirements. Therefore, except for that portion of 405 KAR 7:092 section 4(5) discussed in finding B.3.(c)(4) of this preamble, the Director finds that adoption of these proposed rules will not render the Kentucky program inconsistent with SMCRA or its implementing Federal regulations.

(b) *Proposed regulations, not part of Kentucky's current hearings regulations, which are substantively identical to corresponding Federal regulations.*

405 KAR 7:092 section	Subject	Federal regulation
3(4)(b)	Assessment conference.	30 CFR 845.18(a).
4(1)(a)	Request for conference.	30 CFR 845.18(a).
4(1)(c)	Date of conference.	30 CFR 845.18(b)(1).
4(3)	Conference officer.	30 CFR 845.18(b)(1).
4(6) (a), (b)	Agreed order.	30 CFR 845.18(d) (1), (2).
4(8)	Inadmissible evidence.	30 CFR 845.18(f).
12	Temporary relief.	30 CFR 4.1262–1266, 43 CFR 4.1367, 30 CFR 775.11(b)(2).

Because the above proposed regulations are substantively identical to the corresponding Federal regulations, the Director finds that Kentucky's proposed rules are in compliance with 30 CFR 840.13 and 840.15.

(c) *Proposed regulations that are not part of Kentucky's existing regulations on hearings and which either differ from the corresponding Federal requirements or have no Federal counterparts* (1) *Section 1—Applicability*—This proposed rule is similar to Section 1 of the existing Kentucky rule at 405 KAR 7:090, except that the applicability of the penalty prepayment provisions of Sections 3 and 6 and the waiver of payment provisions of Section 15 would be restricted to enforcement actions (notices and orders) issued on or subsequent to the effective date of 405 KAR 7:092. In addition, when requests for formal hearings had been timely filed at the time these proposed regulations take effect, this section specifies that failure to comply with the procedural requirements of the new regulations shall not be cause for dismissal of the cases. Since regulations are generally prospective rather than retroactive in their application, the Director finds that the provisions discussed above are not inconsistent with the requirements of SMCRA or the Federal regulations, and that the changes proposed by the State will not render Kentucky's program less effective than the Federal program.

(2) Section 3—Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing.—(A) Penalty assessment. Proposed 405 KAR 7:092 section 3(2) is similar to the currently approved rule at 405 KAR 7:090 section 3(2), except that it would prohibit any consideration of good faith in calculating the amount of the proposed penalty if the violation is not correctable. The Director finds that this provision is consistent with 30 CFR 845.13(b)(4), which stipulates that good faith may be considered only in the context of how rapidly the violation is abated, thereby indicating that a person who commits an unabatable violation is not eligible for good faith consideration during the penalty assessment process.

(B) Waiver of hearing on proposed penalty. Proposed 405 KAR 7:092 section 3(4)(a) is similar to the currently approved rule at 405 KAR 7:090 section 3(4)(c), except that, in cases in which a separate request for an administrative hearing on the fact of violation was filed timely, an uncontested civil penalty would not become due and payable until 30 days after the administrative review entity mails a final order affirming the fact of violation. The Federal civil penalty regulations at 30 CFR part 845 and Federal administrative review regulations at 43 CFR part 4 do not clearly specify when a civil penalty becomes due and payable in this situation. However, the Kentucky proposal appears to be an equitable approach in that it would not require a person who challenges the fact of violation at the time of issuance of the notice of violation to pay any related civil penalties (which would be assessed at a time subsequent to the filing of this appeal) until such time as a final decision on the fact of violation is rendered. Therefore, the Director finds that it is not inconsistent with section 518 of SMCRA or the Federal regulations implementing that section of the Act.

(C) Administrative review rights. Proposed 405 KAR 7:092 section 3(4)(c), which sets forth a person's rights to administrative review of the proposed penalty and/or fact of violation following issuance of the proposed penalty assessment, is similar to the corresponding Federal provisions at 30 CFR 845.19(a), as required by 30 CFR 840.13(c) and 840.15, with one exception. That exception is the sentence specifying that this subsection shall not be construed as infringing upon a person's right to contest the fact of the violation without paying the proposed assessment into the Cabinet's escrow account if a petition is timely filed pursuant to 405 KAR 7:092 section 7, the State counterpart to 30 CFR 843.16, which allows a person to appeal the fact of violation at the time a notice of violation is issued rather than waiting to do so until the proposed penalty assessment is received. Neither 30 CFR 843.16 nor 845.19 include equivalent language. However, OSM has always applied and interpreted these Federal rules in a manner consistent with the State's proposal. Therefore, the Director finds that the proposed State rule is not

inconsistent with any Federal requirement.

(3) Section 5—Administrative Hearings Initiated by the Cabinet—(A) Mandatory actions. Proposed 405 KAR 7:092 section 5(1)(c) sets forth the conditions under which the cabinet shall initiate an administrative hearing and seek revocation of the permit and forfeiture of the bond or suspension of the permit. The proposal is similar to the currently approved Kentucky rule at 405 KAR 7:090 section 5(2)(b), except that the new rule no longer lists a pattern of violations as one of the conditions requiring issuance of a show cause order, whereas the existing rule in 405 KAR 7:090 and the corresponding Federal rule at 30 CFR 843.13(a)(1) do. However, elsewhere in this amendment, Kentucky has transferred this requirement to 405 KAR 12:020 section 8. Therefore, the Director finds that the changes proposed by Kentucky will not render the State program less stringent than SMCRA or less effective than the Federal regulations.

(B) Procedures and filing requirements. Proposed 405 KAR 7:092 section 5(3) sets forth procedures and filing requirements for administrative hearings initiated by the cabinet. Although there is no direct counterpart in Kentucky's current hearings regulations or the Federal regulations, the Director finds that the proposal would not adversely affect the State's ability to comply with the State counterparts to the administrative review and public participation provisions of the Federal regulations at 43 CFR Part 4 or the requirements of 30 CFR 840.13 and 840.15, and that it is therefore not inconsistent with any Federal requirement.

(C) Burden of proof. Proposed 405 KAR 7:092 section 5(4) provides that the Cabinet shall have the ultimate burden of persuasion when the Cabinet initiates an administrative hearing; the responding party shall have the burden of persuasion to establish an affirmative defense; and the responding party shall have the burden of persuasion to establish qualifications for an exemption, if one is claimed. There is no direct counterpart in Kentucky's current hearings regulations or in the Federal regulations. However, the Director finds that the proposed rule is in accordance with established legal principles; that it does not conflict with any SMCRA-related Federal requirement, including the various burden of proof provisions of subpart L of 43 CFR part 4; and that it is, therefore, not inconsistent with SMCRA or the Federal regulations.

(D) Show cause orders for failure to comply with hearing officer orders. Proposed 405 KAR 7:092 section 5(5) sets forth criteria and procedures for issuance of orders to show cause why an objection to the Cabinet's petition should not be dismissed when the person filing the objection fails to comply with a prehearing order of the hearing officer. If the person does not provide a satisfactory explanation, the proposed rule requires that the hearing officer recommend the entry of a final order conforming to the relief requested by the Cabinet. In addition, the proposed rule provides that a person against whom an administrative complaint is filed by the Cabinet shall be deemed to have waived the right to a hearing if he or she fails to appear at the hearing. There is no direct counterpart in either Kentucky's current hearings regulations or the Federal regulations. However, the proposed rule is consistent with the various provisions of subpart L of 43 CFR part 4 governing default judgments and summary disposition of complaints (especially 43 CFR 4.1156), and it would not adversely impact any Federal requirements. Therefore, the Director finds that it is not inconsistent with SMCRA or the Federal regulations.

(4) Section 6—Administrative Hearings for Review of Proposed Penalty Assessments. Proposed 405 KAR 7:092 section 6 sets forth procedural and related requirements concerning administrative review of proposed civil penalty assessments. With two exceptions, these requirements, when read with their companion provisions in this amendment at 405 KAR 7:091 (especially section 3(5)(b)) and 405 KAR 7:092 section 13(6), are similar to the corresponding Federal rules at 43 CFR 4.1150 through 4.1157, as required by 30 CFR 840.13(c) and 840.15.

Although the Kentucky rules do not contain any counterparts to those portions of the Federal rules (e.g., 43 CFR 4.1154 and 4.1157(b)(1)) which refer to use of a civil penalty formula or point system, the omission of these provisions does not render the State program inconsistent with SMCRA or the Federal regulations. Section 518(i) of SMCRA requires only that State programs incorporate penalties no less stringent than those set forth in the Act and "contain the same or similar procedural requirements relating thereto." In interpreting this provision, the court, in *In re Permanent Surface Mining Regulation Litigation*, Civil No. 79–1144 (D.D.C., February 26, 1980, mem. op. at 14–16, and May 16, 1980, mem. op. at 56–57), held that OSM could not require States to adopt a counterpart to the Federal civil penalty formula and point system. Therefore, in omitting the provisions discussed above, the proposed amendment does not violate SMCRA as interpreted by the courts.

However, the proposed Kentucky rules also differ from the Federal rules at 30 CFR 845.18(c) and 43 CFR 4.1151(b) with respect to how participants in an assessment conference must be notified of the results of the conference. The Federal rule at 30 CFR 845.18(c) requires that the person assessed be notified of the conference results by certified mail or alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure. The proposed Kentucky rule at 405 KAR 7:092 section 4(5) requires only that the conference officer's report be served by regular mail. Similarly, the Federal rule at 43 CFR 4.1151(b) provides that a person may file a request for administrative review of a proposed civil penalty within 15 days of service of the conference officer's report, while the proposed Kentucky rule at 405 KAR 7:092 section 6(1)(b) provides that such a request must be filed within 30 days of the date of mailing of the report. This difference is significant since, because no proof of service is required under the Kentucky rule, a person's opportunity to file for administrative review of a proposed civil penalty could expire before actual or constructive receipt of the conference officer's report, and, hence, before he or she even was aware, or had an opportunity to be aware, of the filing deadline. Therefore, in this respect, proposed sections 4(5) and 6(1)(b) of 405 KAR 7:092 are not procedurally similar to the corresponding Federal requirements and are not in accordance with 30 CFR 840.13(c). Hence, the Director is requiring that Kentucky further amend these rules to make them fully consistent with Federal requirements.

(5) Section 7—Administrative Review of Notices of Noncompliance and Orders for Remedial Measures and Orders for Cessation and Immediate Compliance. Like the Federal rule at 30 CFR 843.16, proposed 405 KAR 7:092 section 7 would allow a person to request administrative review of the fact of violation at the time the notice or order is issued, rather than waiting until the proposed penalty assessment is issued as is required under the currently approved Kentucky program. This section also specifies the procedural requirements applicable to administrative review of these types of

enforcement actions. Since the proposed administrative review procedures and related requirements are similar to those set forth in the corresponding Federal rules in 43 CFR 4.1160 through 4.1187, the Director finds that the proposed rules are consistent with the requirements of 30 CFR 840.13 and 840.15.

(6) Section 8—Request for Review of Permit Determinations. Proposed 405 KAR 7:092 section 8 sets forth procedural and related requirements for administrative review of permit determinations (permit application decisions and revision orders). The proposed procedures and requirements are similar to those set forth in the corresponding Federal rules at 43 CFR 4.1360 through 4.1366. Therefore, the Director finds that the proposed rules are not inconsistent with SMCRA or the Federal regulations. Additional provisions corresponding to the administrative review requirements of 30 CFR 775.11 concerning permit decisions can be found in Chapter 7:091 and Section 12 of Chapter 7:092 of this amendment.

(7) Section 9—Review of Cabinet Determinations. Proposed 405 KAR 7:092 section 9 sets forth the procedures and related requirements for administrative review of Cabinet determinations for which an administrative hearing is not specifically provided elsewhere in the regulations. Although not specified, it appears that Kentucky intends these rules to govern administrative review of valid existing rights determinations, other findings relating to mining within areas protected under section 522(e) of SMCRA, decisions not to inspect or enforce, and any other regulatory authority action not specifically addressed elsewhere in Chapter 7:092. Corresponding Federal administrative review requirements for these types of actions are located at 43 CFR 4.1390 through 4.1394, 4.1350 through 4.1355, and 4.1280 through 4.1286.

In general, the proposed Kentucky rule contains procedures and requirements that are similar to or more detailed (more precise) than those set forth in the Federal rules. However, Kentucky always assigns the burden of establishing a prima facie case and the ultimate burden of persuasion to the person requesting the review, while the Federal rules sometimes assign one or both of these burdens to the regulatory authority when the permit applicant or potential applicant is the person requesting review (see 43 CFR 4.1355 and 4.1394). Nevertheless, since shifting the burden of proof in these cases to the applicant or potential applicant would not adversely affect public participation in the enforcement of the regulatory program, the proposed rule is not inconsistent with 30 CFR 840.15, which is the operative standard of review when determining whether the State program must be consistent with the cited provisions of 43 CFR part 4.

Also, unlike 43 CFR 4.1280 through 1286, the proposed Kentucky rule would grant any person who considers himself or herself aggrieved by any regulatory authority determination the right to petition for administrative review of that determination. Unless otherwise specified by statute or regulation, the Federal rules grant a person this right only if the regulatory authority's decision document specifically authorizes such an appeal. However, as discussed in part above, providing for expanded public participation in the regulatory program is in keeping with both 30 CFR 840.15 and section 102(i) of SMCRA. Therefore, the Director finds that the proposed rule is not inconsistent with the pertinent requirements of SMCRA and the Federal regulations.

(8) Section 10—Proceedings for Suspension or Revocation of Permits Because of Pattern of Violations. Proposed 405 KAR 7:092 section 10 sets forth requirements and procedures for administrative review proceedings concerning orders to show cause why a permit should not be suspended or revoked because of a pattern of violations. The proposal is similar to the corresponding Federal rules at 43 CFR 4.1190 through 4.1195, except that Kentucky has included no counterparts to 43 CFR 1194(c) (decisions must be issued within 20 days of the close of the hearing record), (d) (parties may enter into a settlement agreement at any time with the approval of the presiding official), or the minimum 3-day suspension requirement of paragraph (b). None of these omissions renders the Kentucky program inconsistent with the pertinent requirements of SMCRA and the Federal regulations.

OSM has previously determined that the 3-day minimum suspension provision of 43 CFR 1194(b) need not be incorporated into State programs since it is not one of the sanctions listed in 30 CFR 840.13(b) and is not a procedural or public participation requirement subject to 30 CFR 840.13(c) or 840.15. See the response to Comment No. 5 in the preamble to an earlier **Federal Register** notice concerning the Kentucky program (45 FR 71591, October 29, 1980). Furthermore, since the Federal rule grants the hearing officer broad discretion to waive the minimum suspension requirement, it is unlikely that there would be any significant difference in actual results under the State rules as opposed to the Federal rules.

With respect to the 20-day decision requirement of 43 CFR 4.1194(c), proposed 405 KAR 7:091 section 3(5)(a) provides that all decisions must be made within 30 days of the close of the hearing record. The Director does not find the additional 10 days allowed by the State to be a significant difference, especially since the Federal timeframe is directory rather than mandatory.

Finally, with respect to 43 CFR 4.1194(d), a specific State counterpart is unnecessary since paragraphs (2) and (3) of 405 KAR 7:091 section 3 grant the hearing officer general authority to facilitate and accept settlement agreements in all types of administrative proceedings.

(9) Section 11—Procedures for Abate or Alleviate Orders. Proposed 405 KAR 7:092 section 11 sets forth procedural and related requirements for administrative review of an order to abate or alleviate issued pursuant to KRS 224.10–410 in connection with a surface coal mining and reclamation operation. While there is no direct Federal counterpart, nothing in the proposal would conflict with any Federal requirement under SMCRA. Therefore, the Director finds that it is not inconsistent with SMCRA or the Federal regulations.

(10) Section 14—Costs and Expenses. Proposed 405 KAR 7:092 section 14(1) identifies who may file a petition for award of costs and expenses, including attorneys fees, reasonably incurred in connection with a proceeding held pursuant to 405 KAR 7:092. The proposal is similar to the existing Kentucky rule at 405 KAR 7:090 section 13(2), and the corresponding Federal rule at 43 CFR 4.1291, except that both of these rules provide that failure to file a timely petition *may* constitute a waiver of the right to an award, whereas the proposed rule provides that such failure *shall* constitute a waiver. In the Statement of Consideration (Administrative Record No. KY–1180) accompanying the proposed amendment, Kentucky expressed its belief that SMCRA provides States with sufficient latitude in the promulgation of regulations to prescribe a definite timeframe within which a petition for an award of costs and expenses must be filed.

While the Federal rule is less restrictive than Kentucky's proposed rule, it is also ambiguous in that it fails to provide any guidance as to what factors might contribute to a determination regarding a waiver, and

its provides the petitioner no assurance that an untimely petition will be accepted for review. The proposed Kentucky rule is specific and leaves no room for uncertainty. The timeframe is specific, as is the impact of failure to meet that timeframe. Because the Federal rule allows a hearing officer complete latitude in determining whether to reject an untimely petition, OSM must accord States similar latitude when evaluating proposed program amendments concerning untimely petitions. Therefore, the Director finds that the proposed rule, which would require the categorical dismissal of all untimely petitions, is not inconsistent with section 525(e) of SMCRA, 30 CFR 840.15, or 43 CFR 4.1291 since such a result could also occur under the Federal program.

(11) Section 15—Determinations as to Inability to Prepay Penalties in Escrow Prior to Administrative Review. Proposed 405 KAR 7:092 section 15 establishes a limited waiver from 405 KAR 7:092 section 6(2)(b), which requires that any proposed penalty assessment be prepaid into escrow as a prerequisite for administrative review. The proposal also sets forth filing and procedural requirements related to the processing of petitions for such waivers. In addition, the proposal identifies presumptions considered to be prima facie evidence of an individual's eligibility, or lack thereof, for a waiver from the prepayment requirement.

Under the proposal, the petitioner is required to file a statement of facts supporting his or her contention that he or she is unable to comply with the prepayment requirement. In addition, an affidavit, signed under penalty of perjury, must be filed setting forth the petitioner's income, property owned, outstanding obligations, number and age of dependents, and a copy of the petitioner's most recent Kentucky and Federal income tax returns. The State must then make an independent determination as to the validity of the contents of the petition for waiver and decide whether the waiver should be granted. In making that determination, the State would be guided in part by the presumptions set forth in subsection 15(5), which establish prima facie evidence that the individual is either unable to comply with the prepayment requirement or is not eligible for a waiver.

By letter dated April 26, 1993 (Administrative Record No. KY–1217), OSM requested clarification regarding the presumptions set forth at 405 KAR 7:092 section 15(5). In particular, OSM questioned what followup action Kentucky would take when presented with the prima facie evidence set forth in section 15(5). In its response dated May 7, 1993 (Administrative Record No. KY–1218), Kentucky stated that it "employs environmental investigators who have the ability to verify the validity of claims made to establish the presumptions in section 15(5)."

Section 518(c) of SMCRA specifies that a person who wishes to contest either the amount of the penalty or the fact of violation shall prepay the proposed penalty to the Secretary, who shall then place it into an escrow account. The Federal regulations at 30 CFR 845.19(a) similarly provide that a person charged with a violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty to the Department of the Interior's Office of Hearings and Appeals.

Neither SMCRA nor the Federal regulations either provide for or prohibit waiver of the prepayment requirement. However, in the preamble to a previous proposed rule, OSM indicated that it was considering adoption of a provision allowing waiver of the penalty prepayment requirement when such a requirement would prevent an essentially insolvent person charged with a penalty from either continuing in business or availing himself or herself of the full range of hearings and appeals otherwise available (46 FR 58468, December 1, 1981). In the same preamble, OSM also stated that it was considering, as an alternative, an amendment to 30 CFR 845.19 which would require prepayment only with respect to proceedings that occur after an administrative law judge has determined that a penalty is lawfully due.

OSM subsequently decided to defer final rulemaking action on the proposed alternatives. However, the **Federal Register** document announcing the deferral (47 FR 35632, August 16, 1982) reiterated the agency's concern that rigid adherence to a prepayment requirement may violate constitutional due process guarantees. The document also stated that OSM would summarize and respond to all public comments in a subsequent rulemaking action. Although OSM has never completed this action, the fact that the final rule document did not dismiss or reject the proposed alternatives indicates that the absence of a prepayment waiver provision in SMCRA does not translate into a prohibition.

In *James D. Franklin, et al.* v. *NREPC*, Ky., 799 S.W.2d 1 (1990), the Kentucky Supreme Court invalidated the State's previous prepayment requirement at 405 KAR 7:090 section 4(9), in part because the court held that it deprived indigent individuals of due process in violation of the equal protection clauses of both the State and Federal constitutions. Kentucky's current proposal with its limited waiver for inability to pay should minimize the possibility of another successful challenge on constitutional grounds; approval also would be consistent with the Federal rule preambles discussed above.

OSM recognizes that one of the principal factors leading to the adoption of SMCRA's prepayment requirement was Congressional concern about the historically low collection rate of similar penalties assessed by other governmental agencies. However, under the proposed Kentucky criteria, the government's ability to collect penalties would not be affected since the financial condition of qualified petitioners would, in all probability, preclude payment of the penalty regardless of whether a waiver of the prepayment requirement is available.

Based on the foregoing discussion, the Director finds that Kentucky's proposal is not inconsistent with section 518(c) of SMCRA. However, during oversight of the Kentucky program, OSM will closely evaluate the State's implementation of this provision. In particular, OSM will monitor whether the presumptions set forth in subsection 15(5) are being verified by the Cabinet, and how the State is determining whether individuals who do not meet the presumptions qualify for a waiver. Should abuse develop, the Director will take all necessary actions to ensure that corrective measures are initiated in a timely fashion.

4. 405 KAR 12:020 Enforcement

(a) *Section 6—Informal Public Hearings on Orders Ceasing Mining.* In concert with the changes to 405 KAR 7:091 and 7:092 eliminating preliminary hearings, Kentucky has proposed to revise 405 KAR 12:020 section 6 by adding provisions for informal public hearings on all enforcement orders ceasing mining. The proposed rules are procedurally similar and substantively identical to all provisions of the corresponding Federal rules at 30 CFR 843.15 that are pertinent to State programs. Accordingly, the Director finds that 405 KAR 12:020 section 6 as proposed is in compliance with 30 CFR 840.13(c) and 840.15.

(b) *Section 7—Suspension and Revocation of Permits*

Section 8—Pattern of Violations. In connection with the repeal of 405 KAR 7:090, Kentucky is revising other

chapters of its regulations to include material formerly found in Chapter 7:090. In this case, Kentucky is proposing to add provisions previously found at 405 KAR 7:090 section 5(4) to 405 KAR 12:020 section 7(2). These provisions specify the action a permittee must take when a permit is suspended or revoked; they are substantively identical to the pertinent portion of the corresponding Federal rule at 30 CFR 843.13(c).

In addition, Kentucky is proposing to add provisions previously found at 405 KAR 7:090 section 5(2) to 405 KAR 12:020 section 8. These provisions concern patterns of violations; they are substantively identical to all portions of the corresponding Federal rules at 30 CFR 843.13 (a) and (d) that are pertinent to State programs.

Since the proposed reorganization of the Kentucky rules will not affect the applicability of the rules discussed above, the Director finds that the proposed amendment is in accordance with 30 CFR 840.13 (b) and (c), which require that State programs include enforcement sanctions and procedures consistent with those set forth in SMCRA and 30 CFR part 843.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submissions dated July 28, 1992 (Administrative Record Number KY–1170), and July 30, 1992 (Administrative Record Number KY–1171), in the September 23, 1992, **Federal Register** (57 FR 43949 and 57 FR 43952, respectively); (2) For the submission dated September 18, 1992 (Administrative Record Number KY–1180), in the December 9, 1992, **Federal Register** (57 FR 58169); and (3) For the submission dated December 10, 1992 Administrative Record Number KY–1202), in the January 14, 1993, **Federal Register** (58 FR 4384). The public comment periods closed on October 23, 1992. December 24, 1992, and January 29, 1993, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

The Kentucky Resources Council (KRC) filed written comments on October 23, 1992 (Administrative Record Number KY–1195), and February 1, 1993 (Administrative Record Number KY–1208). A summary of those comments and their disposition is set forth below by subject.

A. Definitions

1. KRC expressed its concern that the definition of "person" fails to include certain agencies that are included in the Federal definition. As explained in finding B.1.(b) herein, the Director shares KRC's concern. Therefore, he is not approving Kentucky's proposal to replace its current regulatory definition with a reference to its statutory definition.

2. KRC suggested that the definition of "final order," as proposed, might exclude orders which do not include findings of fact, conclusions of law, and an order. KRC stated that all orders should be considered "final" whether they include findings of fact and conclusions of law or not. The Director does not agree that the State's definition, as proposed, requires that an order include findings of fact or conclusions of law in order to be "final" for the purpose of judicial review. On the contrary, the proposed definition only acknowledges that the final order "may" contain these elements.

3. KRC raised questions regarding the definitions of "initiating documents," "interim report," and "record." The Director has determined that the proposed definitions of "initiating document" and "record" add appropriate clarity and specificity to Kentucky's program and are not inconsistent with the requirements of SMCRA and the Federal regulations. Regarding "interim report," KRC pointed out that the definition was unacceptable to the extent that the State's intention was to sanction denial of Secretarial review of orders, such as the partial grant or denial of a motion for summary disposition. In its Statement of Consideration (Administrative Record No. KY–1180) accompanying the amendment, Kentucky stated that Secretarial review of interlocutory orders is inappropriate. Kentucky pointed out that all hearing officer recommendations which are final recommendations will be reviewed by the Secretary. The Director has determined that the public participation requirements of 30 CFR 840.15 will not be compromised under the Kentucky scheme since persons claiming imminent environmental harm from the continued operation of a permit or from the continued existence of a violation during the pendency of an appeal may still seek temporary relief. Interlocutory appeals, therefore, are not necessary to prevent imminent environmental harm.

KRC also pointed out that interlocutory appeals might aid in correcting errors of law "prior to expenditures of resources and funds in trying the cases." While this statement may well be true, the Director believes that appellants who ultimately achieve some degree of success on the merits will be able to recoup such expenditures under the cost and attorney fee recovery provisions of the Kentucky program. Therefore, the proposed definition of "interim report" is not inconsistent with the requirements of SMCRA and the Federal regulations.

B. 405 KAR 7:091

1. KRC stated that the reference to KRS 224.10–410 found in Section 1 was inappropriate since actions taken under KRS Chapter 224 are reviewed pursuant to KRS 224.10–420. In response to this comment during State hearings, Kentucky pointed out that new 405 KAR 7:092 section 11 provides specific review procedures as authorized by, and consistent with, the provisions of KRS 224.10–410. The Director finds Kentucky's explanation to be reasonable and appropriate.

2. KRC expressed its opinion that certain punctuation in Section 1 of both 405 KAR 7:091 and 7:092 implies a restriction on the degree to which public participation in hearings addressing enforcement or other nonpermit-related matters is governed by these chapters. Kentucky responded to this comment in its Statement of Consideration (Administrative Record Number KY–1180) by stating that "nothing is meant to exclude citizen participation in all matters listed in 405 KAR 7:091 section 1, Applicability." The Director finds that this clarification adequately resolves KRC's concerns.

3. KRC stated that the right to contest material that is judicially noticed pursuant to Section 3(1)(b) is meaningless without the expressed right to review such material. In response, Kentucky stated that it interprets the right to contest as including the opportunity to review the materials in question (Administrative Record Number KY–1180). The Director finds that this interpretation satisfactorily addresses KRC's concerns.

4. KRC expressed concern that the last sentence in section 3(1)(b) could be construed to authorize the hearing officer to have contact with Cabinet staff outside the formal administrative process. The Director finds that no revisions are needed since the provisions of 405 KAR 7:091 section 4 are controlling with respect to *ex parte* communications.

5. Regarding section 3(4)(c), KRC states that the characterization of an order disposing of part of a case by summary judgment as an interim report precludes the party from seeking

Secretarial review of that particular disposition. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky disagreed with this statement, and the Director concurs, since partial dispositions will ultimately be reviewed by the Secretary as part of his or her review of the hearing officer's recommendations. See also the Director's response to the KRC comment concerning the definition of "interim report."

6. KRC suggested that the discussion in section 3(6), regarding Secretarial orders, should refer to findings of fact and conclusions of law since that is how "final order" is defined in 405 KAR 7:001. The Director finds that, since the term "final order" is specifically defined, there is no need to restate that definition whenever the term is used.

7. KRC requested that any proceedings that would authorize *ex parte* contact, as contemplated by Section 4(1), be explicitly stated. Inasmuch as the language of Section 4(1) is substantively identical to the Federal provisions at 43 CFR 4.27, the Director finds that no modifications to the State rule are needed. KRC also stated that this provision should be revised to include language clarifying what is meant by the term "proceedings." In responding to this comment (Administrative Record Number KY–1180), Kentucky stated that the term was self-explanatory and did not require modification. The Director concurs with Kentucky.

8. KRC states that section 5(5) is unclear as to what constitutes service. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky argues that the provision is sufficiently clear to provide guidance as to how and in what manner initiating and followup documents are to be served, particularly when read together with other provisions such as 405 KAR 7:091 section 5(4). The Director concurs with the State's explanation.

9. KRC opined that section 12(2), which provides that the commencement of proceedings for judicial review of a final order of the Secretary shall not operate as a stay of a final order unless specifically ordered by a court of competent jurisdiction, should reference the criteria for temporary relief since appeals from agency actions do not operate to stay the effect of a final order pending judicial review. Section 12(2) is substantively identical to the corresponding Federal provision in section 526(d) of SMCRA; therefore, the Director finds that no revisions are necessary. Furthermore, temporary relief in these situations would have to be granted by the court, and the regulations in question are not applicable to judicial reviews.

C. 405 KAR 7:092

1. KRC suggested that Kentucky provide training for its assessment conference officers, and that conferences be recorded. In response, the Director notes that there are no Federal requirements for conference officer training or recording of conferences. Indeed, paragraphs (b)(1) and (f) of 30 CFR 845.18 clearly specify that assessment conferences are to be informal and that statements made by participants cannot be used in a subsequent formal proceeding to impeach a witness. Therefore, Kentucky's program is consistent with the Federal regulations in this respect.

2. KRC stated that section 5 must include provisions for revocation of a permit for willful failure to comply with the Federal Act, regulations, and orders. In responding to KRC's concerns (Administrative Record Number KY–1180), Kentucky pointed out that the Cabinet's policy is to refuse to issue a permit when there are outstanding unabated Federal violations. In addition, when a permit has been issued, and it is later determined that there were outstanding violations at the time of issuance, Kentucky stated that the Cabinet would rescind the permit as being improvidently issued pursuant to 405 KAR 8:010.

Finally, 405 KAR 12:020 section 8 provides for suspension or revocation of permits, when appropriate, for all violations of the Kentucky program, regardless of whether the violations were issued by Kentucky or OSM. However, neither SMCRA nor the Federal regulations require that the State revoke a permit for failure to comply with the Federal Act or regulations. To do so would be inconsistent with the doctrine of State primacy established in section 101(f) and section 503 of SMCRA.

3. KRC states that section 14(1) is more restrictive than the Federal rule at 43 CFR 4.1291 since failure to file a timely petition for an award of costs and expenses is considered a mandatory waiver of the right to such an award, whereas the Federal rule provides only that such failure may constitute a waiver. As explained in detail in finding B.3.(c)(10), the Director has determined that the proposed rule is not inconsistent with the Federal standards for State program approval.

4. KRC argues that section 14(4)(a), which pertains to cost and attorney fee recovery, should not be restricted to permit "conditions" inasmuch as a violation might involve permit terms that do not appear as specific conditions in the permit approval document. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky responded that the Cabinet interprets the term "permit conditions" as including the terms appearing in the permit application as well as those specific conditions appearing on the fact sheet of the permit. Provided Kentucky adheres to this interpretation, the Director finds that the proposed State rule is consistent with the corresponding Federal rule at 43 CFR 4.1294(a)(1).

5. Finally, KRC questioned why cross-references to the hearings regulations in other regulations (i.e., 405 KAR 8:010 section 24, 405 KAR 10:040 section 1(6), and 405 KAR 24:030 section 9), have not been revised to reflect the new citations. Since cross-references are automatically corrected by Kentucky's administrative regulations compiler when regulations are processed for publication, no immediate action is required. However, the Director expects that Kentucky will submit the appropriate revisions, once they are promulgated, as part of a subsequent amendment as soon as is practicable, in keeping with the requirements of 30 CFR 732.17(g).

Agency Comments

Pursuant to section 503(b) of SMCRA and its implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various governmental agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, Mine Safety and Health Administration, Bureau of Land Management, and Bureau of Mines acknowledged receipt of the amendments but offered no substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving, with the exceptions discussed in findings A.1 and B.1.(b) the program amendments as submitted by Kentucky on July 28, 1992, and July 30, 1992 (in the latter case only that portion pertaining to Senate Bill 318), and as modified and resubmitted on September 18, 1992, and December 10, 1992. In addition, as discussed in findings A.1., B.1.(b), and B.3.(c)(4), the Director is requiring that Kentucky further amend certain provisions of this amendment or related provisions of the approved program.

The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. The Director is approving these

proposed rules with the understanding that they will be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

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

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by Section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relief upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 1993.

W. Hord Tipton,

Acting Director.

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

PART 917—KENTUCKY

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

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

2. In § 917.15, a new paragraph (rr) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(rr) The following amendments submitted to OSM on July 28, 1992, and July 30, 1992 (in the latter case, only Senate Bill 318), and as modified and resubmitted on September 18, 1992, and December 10, 1992, are approved effective August 6, 1993, with the exceptions identified herein:

(1) Revisions to Chapter 350 of the Kentucky Revised Statutes, as set forth in Senate Bill 318 as enacted during the 1992 regular session of the Kentucky General Assembly, with the exception of the phrase "except as may be ordered by the hearing officer" in Section 1(3) of Senate Bill 318; and

(2) Revisions to Chapters 7:001 and 8:001 of Title 405 of the Kentucky Administrative Regulations, pertaining to definitions, with the exception of the proposed definitions of "person" at 405 KAR 7:001 section 1(63) and 8:001 section 1(78);

(3) Repeal of Chapter 7:090 of Title 405 of the Kentucky Administrative Regulations, pertaining to hearings;

(4) Addition of Chapters 7:091 and 7:092 to Title 405 of the Kentucky Administrative Regulations, pertaining to administrative review requirements and procedures and civil penalty assessment; and

(5) Revisions to Chapter 12:020 of Title 405 of the Kentucky Administrative Regulations, pertaining to inspection and enforcement requirements and procedures.

3. In § 917.16, paragraphs (j) and (k) are added and the section title is revised to read as follows:

§ 917.16 Required regulatory program amendments.

* * * * *

(j) By October 1, 1993, Kentucky shall submit either proposed amendments or a schedule for the submission of proposed amendments to OSM to revise the following provisions of the Kentucky Revised Statutes in the manner described:

(1) That portion of the new section of Chapter 350 added by section 1 of Senate Bill 318 as enacted by the Kentucky General Assembly during the 1992 regular session, to delete the phrase "except as may be ordered by the hearing officer" in section 1(3) of the enacted bill; and

(2) The definition of *person* in KRS 350.010(9), to include all entities encompassed by the corresponding definition in 30 CFR 700.5.

(k) By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7:091 section 5, and to specify that the time allowed under 405 KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

[FR Doc. 93–18854 Filed 8–5–93; 8:45 am]
BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Implementation of Delivery Point Barcode Requirement for Letter-Size Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adopts on a permanent basis the temporary changes to the standards for automation rate letter-size mailings that were made effective March 21, 1993, requiring a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and making conforming changes to the standards for ZIP+4 numeric discounts.

EFFECTIVE DATE: August 11, 1993

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin (202) 268–5176.

SUPPLEMENTARY INFORMATION: On November 9, 1992, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Pre-barcoded Letter Mail Requirements, PRC Docket No. MC93–2, requesting that the Domestic Mail Classification Schedule (DMCS) be changed to re-define prebarcoded letter-size mail as mail "which bears a barcode as prescribed by the Postal Service." The Postal Rate Commission published a notice in the Federal Register on November 20, 1992 (57 FR 54866) describing the request and offering interested parties an opportunity to intervene.

On February 18, 1993, the Postal Service published a proposed rule setting forth the amendments to the prebarcoding standards in the Domestic Mail Manual (DMM) that would be needed to implement the requested classification change, as well as conforming changes to the standards for numeric ZIP+4 rates for letter mail (58 FR 8921).

On March 5, 1993, the Postal Service published notice that the DMCS change it had requested would be placed into effect on a temporary basis, pursuant to 39 U.S.C. 3641(e) and as authorized by the Board of Governors of the Postal Service in Resolution No. 93–3 (March 1, 1993). The temporary change took effect at 12:01 a.m. on March 21, 1993 (58 FR 12605).

Pursuant to the authority granted by the temporary classification change, the Postal Service published a final rule on March 12, 1993, setting forth DMM regulations implementing the temporary DMCS change (58 FR 13551). As proposed in the February 18 proposed rule, the final rule amended the prebarcoding standards in the DMM to require a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and made conforming changes to the standards for ZIP+4 numeric discounts. These DMM changes also took effect on March 21, 1993.

On June 30, 1993, the Postal Service published a notice concerning the restructuring and revision of the DMM, effective with DMM Issue 46, July 1, 1993 (58 FR 34887). The notice included detailed cross-reference tables. DMM Issue 46 made no substantive changes to the prebarcoding and related standards that had taken effect on March 21. The standards for letter-size automation-rate mailings appear in Modules R (Rates and Fees), P (Postage Payment), E (Eligibility), A (Addressing), C (Characteristics and Content), M (Mail Preparation and Sortation), and L (Labeling Lists) in the restructured DMM.

On August 2, 1993, the Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625, approved the Recommended Decision of the Postal Rate Commission in Docket No. MC93–2 to amend the DMCS to re-define pre-barcoded letter-size mail as mail which bears a barcode "representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service." The Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the DMCS changes approved by the Governors effective at 12:01 a.m. on August 11, 1993 (Resolution No. 93–9). A notice of those DMCS changes is published elsewhere in this issue.

In accordance with these permanent DMCS changes, this final rule continues on a permanent basis the amendments to the Domestic Mail Manual that were published in the March 12 final rule and took effect on March 21, 1993. Since this final rule makes no changes to the existing standards, those amendments are not reprinted here. The standards that were changed by the March 12 final rule now appear in sections R100, R200, R300, P000, P100, P200, P300, P700, R100, E200, E300, A000, A800, A950, C800, M000, and M800 of the restructured DMM. For more detailed information on the location of these standards, see the cross-reference tables at 58 FR 34887–900.

These permanent changes to the Domestic Mail Manual will take effect at 12:01 a.m. on August 11, 1993. The Postal Service believes that mailers have adequate notice of the permanent standards, since no change in existing standards is made.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Under the authority of the Postal Reorganization Act, the temporary changes to the Domestic Mail Manual promulgated on March 12, 1993 at 58 FR 13551–55 are hereby adopted on a permanent basis.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–18839 Filed 8–5–93; 8:45 am]
BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 76

[MM Docket No. 92–264, FCC 93–332]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order segment of this Report and Order/Further Notice of Proposed Rule Making adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). Specifically, this Report and Order finds that section 617 anti-trafficking restrictions apply only to assignment and transfers of control of cable systems, defines such transactions, and establishes certification requirements and procedures for resolutions of anti-trafficking disputes concerning certification, applicability, and exemptions. It also adopts a blanket anti-trafficking waiver for small cable systems. This Report and Order establishes a standardized transfer approval form for use in requesting transfers of cable systems held for three years or more, and procedures for approval of such requests by local franchising authorities. Finally, this decision amends the Commission's rules to implement the cable/Multichannel Multipoint Distribution Service (MMDS), and the cable/satellite master antenna television service (SMATV) cross-ownership restrictions mandated by the 1992 Cable Act. These actions are taken in order to comply with the mandate of the 1992 Cable Act. The Further Notice of proposed Rule Making segment of this decision may be found elsewhere in this **Federal Register**.

EFFECTIVE DATE: This action is effective September 7, 1993, except for 47 CFR 76.502(i), which becomes effective November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order segment of the Commission's Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 92–264, FCC 93–332, adopted June 24, 1993, and released July 23, 1993. The complete text of this Report and Order and Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. Through this decision, the Commission adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the 1992 Cable Act. The Notice of Proposed Rule Making and Notice of Inquiry (Notice) initiating this proceeding was published at 58 FR 3523, January 11, 1993.

2. Section 13 of the 1992 Cable Act mandates a cable anti-trafficking rule, which, with certain exceptions, prohibits cable operators from selling or otherwise transferring ownership in a cable system within three years following the acquisition or initial construction of the system by the operator. Section 11(a) of the 1992 Cable Act modifies section 613(a) of the Communications Act to prohibit the common ownership of a cable system and an MMDS license, or a cable system and an SMATV, separate and apart from any franchised cable service, within any portion of the franchise area served by that cable operator's system. The anti-trafficking and cross-ownership provisions of the 1992 Cable Act contain no specific effective date and thus, pursuant to section 28 of the 1992 Cable Act, became effective on December 4, 1992.

3. Briefly, this Report and Order: (1) Concludes that the section 617 anti-trafficking restriction applies only to assignments and transfers of control of cable systems; (2) finds that such transactions will be defined generally, by reference to the Commission's broadcast assignment and transfer of control standards used to implement section 310(d) the Communications Act; (3) clarifies that the Commission will rely on local franchise authorities to monitor and exercise primary enforcement responsibility under the anti-trafficking rule; (4) requires that cable operators seeking to assign or transfer control of a cable system must certify compliance with the anti-trafficking rule to the local franchise authority at the time local transfer approval is sought; (5) finds that disputes regarding the validity of such anti-trafficking certifications, the applicability of the anti-trafficking rule to a particular transaction, or eligibility for one of the rule's exemptions will be handled by the Commission pursuant to the § 76.7 special relief procedures; (6) determines that the statute provides the Commission with authority to waive the three-year holding period in the public interest and directs the Commission to grant such waivers in cases of default, foreclosure and financial distress; (7) adopts a blanket anti-trafficking waiver for small systems, serving 1000 or fewer subscribers; (8) establishes a standardized transfer approval form for use in requesting transfers of cable systems owned for three years or more, and procedures for approval of such requests by local franchising authorities, and (9) amends the Commission's rules to implement the cable/MMDS, and the cable/SMATV cross-ownership restrictions mandated by the 1992 Cable Act.

I. Anti-Trafficking Restriction

4. As indicated above, a new section 617 of the Communications Act provides, with certain exceptions, that "no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator." Where a transaction involving a multiple system transfer provides for the subsequent transfer of one or more such acquired systems to a third party, the subsequent transfer will be considered part of the original transaction for purposes of determining compliance with the three-year holding period.

5. Section 617(c) of the Communications Act creates several exceptions under the anti-trafficking rule, including: (1) Transfers which are not subject to Federal income tax liability; (2) sales required by operation of law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferror. Moreover, the Commission is given broad authority to grant waivers under the anti-trafficking rule, consistent with the public interest. However, where local transfer approval is required, the Commission may not waive the three-year holding requirement unless the franchise authority has approved such transfer Section 617(d) directs the Commission to grant anti-trafficking waivers to permit appropriate transfers in cases of default, foreclosure, or other financial distress.

Transfer of Ownership

6. It is not clear from the statutory language whether the anti-trafficking provision applies to all transfers of ownership in a cable system which effect changes in the identity of the cable operator or whether the rule applies to transfers of ownership of a cable system by a cable operator, so that only transfers of ownership which constitute transfers of control of a cable system would be subject to the rule. Given the uncertainty regarding the intended application of the anti-trafficking rule, the Commission seeks to adopt an ownership standard that will accomplish the House Report's stated objective of preventing profiteering transactions and other transfers that may affect cable rates or service, without inhibiting investment in the cable industry or disrupting legitimate cable transactions.

7. The Commission believes that the anti-trafficking provision of the 1992 Cable Act was aimed at deterring the acquisition of cable systems by individuals interested only in speculating or exploiting ownership in cable systems for short term gain through quick resale, and was not meant to prohibit all transactions in which a cable system is sold at a profit. Consequently, the Commission determines that the anti-trafficking rule will apply only to transfers of control of cable systems. The Commission further concludes that its current broadcast assignment and transfer or control standards developed to implement section 310(d) of the Communications Act are appropriate to accomplish these objectives and so will be effective in implementing the cable anti-trafficking restriction.

8. Involuntary or *pro forma* transfers of control are exempt from the cable anti-trafficking rule under the statutory exceptions provided in section 617(c) of the Communications Act. Transfers of purely management interests will also be exempt from the cable anti-trafficking rule as the statutory language addresses only transfers of "ownership" interests in a cable system. Consequently, the Commission will apply the three-year holding period only to assignments and transfers involving substantial changes in ownership that constitute transfers of control. The procedures that currently govern the need for Commission approval in connection with assignments and transfers of control of CARS licenses can be used as reference for determining when the anti-trafficking rule will be applicable to a particular transfer. Thus, if a transfer of ownership in a cable system does not result in a change in the identity of the franchisee, or in the holder of a controlling interest in the cable operator, the transfer will not be subject to the three-year holding period. For this purpose, an assignment occurs when a franchise is transferred from one entity to another. A transfer of control occurs when the franchisee remains the same, but the owner or holder of a controlling interest in the franchise changes. Assignments are generally associated with asset sales, and transfers of control are generally associated with stock sales. There are no significant differences between assignments and transfers of control for purposes of the Commission's rules.

9. The Commission briefly describes how it determines the types of transfers of ownership interests that constitute transfers of control requiring Commission approval under the broadcast rules. These same issues and determinations will apply to determinations of transfers of control of cable systems subject to the anti-trafficking rule. Transfers of control are easily identifiable in the vast majority of cases. Typically, the buyer will acquire *de jure* control or "legal control," by acquiring a majority (51% or more) of the licensee's voting stock, or partnership interests, or effect a change in the general partner. Such transfers would be considered transfers of control under our broadcast rules and thus, in the cable context would be subject to the anti-trafficking rule, provided they are substantial and voluntary and do not qualify for any of the statutory exceptions.

10. The more difficult questions regarding determinations of transfers of control involve transfers of *de facto* or "actual control." *De facto* control exists when a holder of a minority interest in a corporation is in actual control. Thus, some transfers of a minority interest in a cable system may constitute a transfer of control subject to the anti-trafficking rule. In the broadcast context, we have said that determinations of *de facto* control are governed by the demonstration of power to dominate management of corporate affairs. In this context the Commission has defined transfers of control in broad terms as "any act which vests in a new entity or individual the right to determine the manner or means of operating the license and determining the policy that licensee will pursue." This definition encompasses every form of control, actual or legal, direct or indirect, negative or positive.

11. Since the size of a person's equity ownership interest is relevant but not determinative to issues of control, the Commission ascertains issues of *de facto* control on a case-by-case basis by looking at all relevant factors. Commission decisions have generally focused on the ability of a person or entity to control a licensee's finances, personnel practices, and programming decisions. Transfers of *de facto* control have been established where non-controlling stockholders exercise substantial management or financial control over a licensee. The Commission notes, however, that sales of minority interests in corporate licensees occur routinely, particularly in publicly traded companies. Such sales, unless they result in the acquisition or loss of control, do not require Commission approval.

12. As indicated above, in all but a few cases transfers of control will be clearly established by transfers of a majority or controlling ownership interest. Where transfers of ownership do not affect the entity holding a controlling interest in the franchisee, the three-year holding period is inapplicable. In unusual cases, where doubt exists about the applicability of the anti-trafficking rule, cable operators seeking to transfer an ownership interest in a cable system should consult with their local franchise authority. Reference should also be made to whether or not the cable operator is required to file an application for Commission approval to transfer a CARS license in connection with such transfer. Where Commission approval is required to transfer a CARS license, the transfer will also be subject to the three-year holding requirement. If franchise authorities and cable operators are unable to determine the applicability of the anti-trafficking rule to a particular transfer, either party may request a declaratory ruling from the Commission.

Procedures for Monitoring Compliance

13. The Report and Order concludes that local authorities are best able to monitor compliance with the anti-trafficking rule, as local authorities are knowledgeable about individual cable operators and franchise agreements and so are better positioned than the Commission to evaluate the effects of a proposed transfer on cable rates and service. Moreover, local anti-trafficking enforcement should not delay or add significantly to the administrative burden associated with most cable system transfers. Thus, cable operators seeking to assign or transfer ownership in a cable system must certify to the local franchise authority that the subject transfer complies with the anti-trafficking rule, that the transferor is seeking or has obtained a waiver from

the Commission, or that the transfer is otherwise exempt from the anti-trafficking rule. Such certification must be submitted to the local franchise authority at the time a cable operator submits a request for transfer approval.

14. If local transfer approval is not otherwise required by the franchise agreement, the anti-trafficking certification must be submitted to the local franchise authority no later than 30 days in advance of the closing date of the proposed transaction. All such certifications must contain a complete description of the transaction and the nature of the interest being transferred, the date on which such interest was acquired, and the effective date of the proposed transfer. Certifications claiming exemption from the anti-trafficking rule should also describe the nature of the transaction and identify the applicable exemption accompanied by a statement of the facts giving rise to the claimed exemption. Receipt by the local franchise authority of the appropriate certification will create a presumption of compliance with the anti-trafficking provision. Franchise authorities may request additional information reasonably necessary to determine the validity of a certification in cases where the franchise authority has reason to doubt the accuracy of a certification.

15. Franchise authorities questioning the accuracy of an anti-trafficking certification must notify the cable operator within 30 days of the filing of such certification, or such certification shall be deemed accepted. The 30-day review period will not be tolled by requests for additional information by the franchise authority, unless the cable operator fails to provide complete and accurate responses to such requests within 10 days of the date of such request. The 30-day limitation on franchise authority consideration of an anti-trafficking certification in no way affects the time allowed for franchise authority consideration of the transfer request itself.

16. For systems held for three years or more the anti-trafficking certification is incorporated into the FCC standardized transfer approval Form discussed below. For such systems, the 30-day period for consideration of the anti-trafficking certification will in no way affect the running of the 120-day statutory period for consideration of such transfer requests. Local decisions regarding the accuracy of a certification, eligibility for one of the exemptions, and questions regarding whether a transaction is subject to the holding period are appealable to the FCC pursuant to the special relief procedures set forth in § 76.7 of the Commission's rules. The Report and Order further concludes that Commission resolution of anti-trafficking disputes is necessary to ensure prompt and consistent determinations regarding the application of the three-year holding period to a particular transaction.

17. Local franchise authorities shall notify the Commission if the facts ultimately reveal a willful violation of the anti-trafficking rule. The Commission will then determine the application of appropriate sanctions, according to the procedures set forth in § 76.9 of Commission rules. Determinations by the Commission regarding appropriate remedies will not limit, in any respect, the remedies available to local franchise authorities under the terms of the franchise agreement or local law.

Calculation of Three-Year Holding Period

18. The Commission ascertains that for initially constructed systems, the holding period will be measured from the date on which service is activated to the system's first subscriber. For acquired systems, the holding period will commence on the effective date of the closing of the transaction in which the system was acquired. In the case of sales in stages or installment transactions, the holding period will begin on the effective date of the transaction which results in the transferee or assignee acquiring a control of the cable system. The three-year holding period will be measured from the date of acquisition or initial construction through the proposed effective date of the closing of the transaction transferring ownership of the cable system. While a transfer or sale agreement may be executed prior to the completion of the three-year holding period, consummation of the transfer may not take place until after the expiration of the holding period.

MSO Transfers

19. The Commission does not believe that Congress meant for the anti-trafficking rule to impede MSO transactions. Because system operators frequently build out their systems into adjacent communities or acquire nearby cable systems, a separate holding period may not be appropriate for each such franchise. Common ownership of cable systems creates operating efficiencies and allows cable operators to expand cable service to previously unserved areas. Nonetheless, to preserve the objectives underlying the anti-trafficking rule, a substantial number of the MSO's subscribers must have been served by cable systems owned by the MSO for at least three years.

20. In this regard, the Commission will entertain requests to waive the anti-trafficking restriction in cases involving MSO transfers. The Commission will look favorably upon such waiver applications where two-thirds or more of the MSO's subscribers are served by systems owned for three years or more. Where an MSO transfers several systems in a single transaction, the Commission will look favorably upon waiver requests if two-thirds of the subscribers of the systems being transferred are served by systems held for three years or more.

Subsequent Transfers Required by the Terms of the Sale

21. Section 617(b) of the Communications Act provides that in the case of multiple system transfers, "if the terms of the sale require the buyer subsequently to transfer ownership of one or more of the systems to one or more third parties, such transfers shall be considered part of the original transaction." The Commission believes that this provision does not require that a subsequent transfer be explicitly mentioned in the original transfer or sale agreement. Accordingly, the Commission interprets the "terms of the sale" requirement to include all agreements in connection with the original sale or transfer including the sale or transfer agreement, letters of intent, financing agreements, security agreements or other contemporaneous arrangements or agreements in connection with the original transfer.

22. A request for local transfer approval for such subsequent transfer must be filed within 90 days of the effective date of the closing of the original transaction. In addition, the effective date of the closing of the subsequent transaction must be no more than 90 days following the grant of transfer approval by the local franchise authority. If local transfer approval is not required pursuant to the terms of the franchise, then we require that the subsequent transfer be completed within 180 days from the closing of the original transaction. Under this provision, a subsequent transfer that is considered part of the original transaction will not require application of a separate three-year holding requirement

Exceptions

23. The 1992 Cable Act provides for three exceptions to the anti-trafficking rule contained in section 617(c). First, section 617(c)(1) exempts from the three-year holding period all transfers of

ownership in a cable system which are not subject to Federal income tax liability. The Commission determines that Congress sought to exempt all transactions which qualify as "tax exempt" under the Federal Income Tax Code ("Code"). For this purpose, "tax exempt" transactions include all transactions in which there is no cognizable gain or loss under the Code. Certifications claiming an anti-trafficking exemption under any of the exemptions listed in section 617(c), accompanied by an explanation of the basis for the claimed exemption, shall be sufficient to establish a presumption of compliance. However, local authorities may request additional information reasonably necessary to establish eligibility under the claimed exemption.

24. The second exception sales required by operation of law, or by act of any Federal agency or any State or political subdivision thereof, or any franchising authority. The Commission finds that this provision exempts from the three-year holding period involuntary transfers required by any law, order, act or decree of any Federal, State or local authority, including franchise authorities, executors, receivers, guardians and trustees. The Commission further finds that such involuntary transfers to effect bankruptcy, divorce or probate proceedings would be encompassed in the statutory language and are therefore, appropriately exempted under this provision. In addition, transfers involving municipally-owned cable systems are exempt under this provision.

25. The third exception under the 1992 Cable Act exempts any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferror. The Commission concludes that this provision was intended to exempt the type or *pro forma* transfers defined in § 73.3540(f) of the Commission's Rules, which establishes "short form" approval for *pro forma* transfer only if such transfers do not result in any substantial change in ownership or control between affiliated entities. Furthermore, the legislative history of the 1992 Cable Act indicates that "common control" as used in section 617(c) was meant to include transfers between affiliated entities, regardless of whether such affiliation is by virtue of common "stock ownership, other equity or debt ownership, or management control." Thus, transfers between subsidiaries owned or controlled by the same parent corporation are exempt from the anti-trafficking rule, as are transfers between limited partners and 50% joint venturers. In addition, debt for equity exchanges between affiliated entities, in connection with refinancings and reorganizations, will be exempt from the three-year holding requirement.

Waivers

26. Section 617(d) gives the Commission broad discretion to grant waivers in the public interest. However, the 1992 Cable Act prohibits the Commission from granting waivers unless local franchise authority approval has been obtained, if such approval is required. Except with respect to transfers of MSOs and small systems, the Commission declines to establish specific waiver criteria applicable to public interest waivers. Instead public interest waiver requests will be considered on a a case-by-case basis. Waiver requests must be filed pursuant to the special relief procedures established in § 76.7 of the Commission's rules. Although in most cases local approval is required prior to the consummation of a transfer, the Commission may grant waivers in appropriate cases prior to the grant of such approval so long as the waiver is conditioned upon the grant of such local transfer approval. Commission waivers issued in advance of local transfer approval will not become effective unless such approval is ultimately obtained and will in no way affect the discretion of local franchise authorities to decide such transfer requests.

27. The 1992 Cable Act directs the Commission to grant waivers in cases of default, foreclosure and other financial distress. Such waiver requests should be filed pursuant to the special relief procedures established in § 76.7 of the Commission rules. In cases of default, waiver applicants must establish an affirmative factual showing, supported by affidavits of a person or persons having personal knowledge that the cable operator is in default, other than a technical default, under the terms of a credit or loan agreement pursuant to which the cable operator is primarily liable. Waiver applicants should provide the Commission with copies of default notices or other documentation establishing the creditor's acknowledgment of such default. In cases of foreclosure, waiver applicants must establish an affirmative factual showing, supported by affidavits, that a foreclosure action has been initiated with respect to property affecting the ability of the cable operator to maintain cable service. Copies of foreclosure notices or other documentation establishing that a foreclosure action has been initiated should be submitted as evidence of such foreclosure. A cable operator may establish an affirmative showing of financial distress by submitting evidence, supported by affidavits, of the existence of financial distress. Indica of such financial distress may include, but shall not be limited to, evidence of a net operating loss or insufficient capital to maintain operations. Audited financial statements including statements of cash flow or balance sheets should also be submitted to establish such financial distress.

120-day Limitation on Franchise Authority Consideration or Transfer Requests

28. Under the 1992 Cable Act, franchise authorities must approve or deny transfer requests involving systems owned for three years or more within 120 days, or such requests shall be deemed granted. Thus, the Commission establishes a standardized transfer approval form setting forth the informational requirements which must be satisfied in order to commence the running of the 120-day period. The 120-day limitation and the Commission's informational requirements only apply to transfer of systems owned for three years or more, and only where local transfer approval is required under the franchise. The information solicited on the Commission's form is limited to the information necessary to establish the legal, technical and financial qualifications of the proposed transferee and any information required by the franchise or applicable local law. A copy of the FCC Cable Transfer Form is attached as Appendix B of the full text of this Report and Order/Further Notice of Proposed Rule Making.

29. Franchise authorities may request such additional information as is reasonably necessary to determine the qualifications of the proposed transferee. However, such requests for additional information will not toll or extend the 120-day period unless the cable operator and franchise authority otherwise agree. Cable operators must promptly respond to such requests by completely and accurately submitting all information reasonably requested by the franchise authority.

Blanket Waiver for Small System Operators

30. The Report and Order next adopts a blanket anti-trafficking waiver for small cable systems. Small systems are defined for this purpose as any cable system serving 1000 subscribers or less. The small system waiver is contingent upon, and in no way affects local

franchise authority consideration of such transfer requests, where such transfer approval is required. However, the Commission believes the small system waiver is appropriate for several reasons. First, it comports with the 1992 Cable Act's mandate that the Commission develop appropriate cable regulations which place minimal administrative burden on small systems. Also, to the extent that the anti-trafficking rule may inhibit further investment in the development of small systems serving sparsely populated rural areas, the blanket waiver satisfies Congress' expressed desire to encourage the provision of cable service to such unserved rural areas. Finally, the blanket waiver will eliminate a significant number of waiver requests, while affecting only a small percent (approximately 3.6%) of total cable subscribers. However, if the Commission receives complaints with respect to trafficking abuses by small system operators, the small system waiver may be revoked in individual cases.

II. Cross-Ownership Restrictions

31. The 1992 Cable Act amends section 613(a) of the Communications Act, to add a cable/MMDS and a cable/SMATV cross-ownership restriction. The cross-ownership provision addresses Congress' concern that common ownership of different means of video distribution may reduce competition and limit the diversity of voices available to the public. Section 613 of the 1992 Cable Act also authorizes the Commission to waive the statutory cross-ownership requirements to the extent necessary to "ensure all significant portions of a franchise area are able to obtain video programming." Section 613 further directs the Commission to waive all cable/MMDs and cable/SMATV cross-ownership interests existing as of the effective date of the 1992 Cable Act, December 4, 1992.

32. When the Commission adopted the existing cable/MMDS cross-ownership rule, it specifically grandfathered all cable/MMDS cross-ownership interests that existed as of February 8, 1990, and thus no additional cable/MMDS combinations shall be waived pursuant to the 1992 Cable Act. By contrast, all cable/SMATV cross-ownership interests existing as of December 4, 1992, shall be waived under the 1992 Cable Act.

Cable/MMDS Cross-Ownership Restriction

33 As stated above, section 613(a)(2) of the Communications Act prohibits a cable operator from holding an MMDS license in any portion of the franchise area served by that cable operator's cable system. The Commission is authorized, however, to waive the cross-ownership prohibition to ensure that all significant portions of the franchise area are able to obtain video programming. The Report and Order concludes that the cable/MMDS restriction contained in § 21.912 of the Commission's rules (47 CFR 21.912) with certain additions and modifications, effectively implements the statutory cable/MMDS provision.

34. In adopting regulations to implement the statutory cable/MMDS cross-ownership restriction the Commission also adopts an attribution standard that is consistent with the standards adopted by the Commission in the video dialtone context. (See Second Report, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking in CC Docket No. 87–266, 57 FR 41106 (September 9, 1992.) Thus, in assessing cross-ownership, a cable operator will be considered to have an attributable interest in an MMDS licensee if he or she holds five percent or more of the stock of such licensee, regardless of whether such stock is voting or non-voting. The Commission does not adopt a single majority shareholder exception, and all officer and director positions and general partnership interests will be attributable, as will limited partnership interests of five percent or greater regardless of insulation. Finally, the Commission retains the § 21.912(b) prohibition against cable operators leasing MMDS capacity where there is system overlap. Nevertheless, consistent with the statutory cross-ownership restriction, § 21.912(b) of the Commission's rules is modified to apply only where the MMDS protected service area and the cable operator's actual service area overlap.

35. Overbuild Exception. Section 21.912 of the Commission rules contains an overbuild exception, which provides that the cable/MMDS cross-ownership provision is inapplicable if the cable operator is not the sole provider of cable service in the franchise area. No similar statutory exception was created under section 613 of the 1992 Cable Act. Since the § 21.912 overbuild exception appears to conflict with the statutory cable/MMDS cross-ownership ban, and Congress did not specifically provide for such an exception, this exception is eliminated. The Commission notes however, that nothing in our interpretation of section 613 would prevent an MMDS licensee from obtaining a cable franchise which overlapped with the licensee's protected services area, provided there was no overlap between the licensee's MMDS protected service and the cable systems' service area.

36. Rural Exception. Section 21.912(d)(1) of the Commission's rules establishes a limited rural exception allowing cable operators to obtain an MMDS license to provide service to otherwise unserved rural communities. No similar exception is established under the 1992 Cable Act. Significantly the Commission interprets section 613(a) such that cable/MMDS cross-ownership is permitted in the unserved portions of the franchise area, provided there is no overlap with the MMDS protected service area. Although section 613 allows increased cross-ownership in the unserved portions of the franchise area, several commenters argue that it is essential for the Commission to retain the rural exception in implementing the statutory cross-ownership restriction. Because the Commission is authorized under the 1992 Cable Act to waive the statutory cross-ownership restriction to the extent necessary to ensure all significant portions of a franchise area are able to obtain video programming, such cases will be handled by waiver requests filed pursuant to the special relief procedures set forth in § 76.7.

37. Therefore, the Commission will consider such waivers filed by cable operators subject to the same procedural safeguards established under § 21.912(d)(1) of the existing rules. Cable operators seeking to provide service to rural areas will be granted a waiver of the cross ownership restrictions only if no other MMDS operator desires to provide such service. Cable operators seeking such a waiver, should submit a waiver request and file an application for an MMDS license. Applications for MMDS licenses filed by cable operators will be placed on public notice. Only if no wireless cable applicant responds to the notice with a timely filed application, will the Commission grant a waiver awarding a cable operator an MMDS license.

38. Local Programming Exception. Section 21.912(e) of the Commission's rules contains an exception to the cross-ownership restriction, which allows cable operators to use one MMDS channel in a protected service area to provide locally-produced programming to cable headends. Several commenters argue that the Commission should retain the local programming exception in implementing the statutory cross-ownership restriction. The Report and Order concludes that the local programming exception is consistent with the statutory cross-ownership

restriction and is therefore maintained as it applies to the leasing of MMDS channels.

Cable/SMATV Cross-Ownership Restriction

39. As discussed above, the 1992 Cable Act also mandates a cable/SMATV cross-ownership restriction. The Report and Order determines that while the § 21.912 cable/MMDs regulations contained in the Commission's rules address the same concerns as the cable/SMATV cross-ownership restriction. As detailed in the full text of the Commission's decision, our rules implementing the statutory cable/SMATV cross-ownership restriction prohibit a cable operator from acquiring an attributable ownership interest in a separate SMATV operator providing service within the cable operator's actual service area. Separate SMATV operators are defined as providers of SMATV service within the cable operator's service area, which were not owned, operated or controlled by the cable operator as of the effective date of the 1992 Cable Act. In implementing the cable/SMATV cross-ownership restriction, the Commission employs the same attribution criteria adopted in connection with cable/MMDS cross-ownership restriction above. The attribution rules in this context generally attribute all stock interests of five percent or more, whether such stock is voting or nonvoting. In addition, all officer and director positions and general partnership interests shall be attributable, as will limited partnership interests of five percent or greater, regardless of insulation.

40. Finally, as described above, the 1992 Cable Act only prevents cable/SMATV cross-ownership in those areas of the cable operator's franchise that are served by the cable operator's cable system. Thus, if a cable operator has not wired its entire franchise area, the cross-ownership ban does not prevent the cable operator from building or acquiring a stand-alone SMATV system. However, the Commission concludes that such cable-owned SMATV systems must be operated in accordance with the terms of the cable franchise agreement. In order to protect the competitive opportunities of independent SMATV operators, it is essential that the Commission limit the ability of cable operators to use SMATV technology in their franchise area to provide programming services other than the franchised cable service.

41. In addition, consistent with congressional intent, the Commission's regulations do not prevent the common ownership of an SMATV system that itself qualifies as a cable system under section 602(7)(B) of the Communications Act, and a separate stand-alone SMATV system that is within the same service area. The Commission also does not consider an SMATV system that qualifies as a cable system to be subject to the statutory cable/MMDS cross-ownership restriction. Since Congress intended section 613 to encourage competition for traditional cable systems, it would be contrary to the statutory objective to prevent the common ownership of more than one SMATV system in a franchise area simply because one of the SMATV systems crosses a public right of way.

Enforcement

42. As indicated in the Notice, it is not necessary at this time to establish additional reporting requirements in connection with the MMDS or SMATV cross-ownership restrictions. The Commission's existing rules at 47 CFR 21.921(c) require applicants for MMDS licenses to show that no portion of the facility's protected service area will overlap with the cable franchise area of an affiliated cable operator. This rule is amended to require that applicants show that the protected service area will not overlap with any portion of the franchise area actually served by an affiliated cable operator's cable system. However, the Commission will not adopt specific reporting requirements at this time for cable/SMATV cross-ownership. Instead, the Commission will enforce these cross-ownership rules on a complaint basis. Complaints regarding cross-ownership violations should be filed with the Commission pursuant to the procedures set forth in § 76.9. of the rules.

Final Regulatory Flexibility Analysis

43. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small cable systems. As detailed in the full text of the Report and Order/Further Notice of Proposed Rule Making, the Commission has attempted, wherever possible within the statutory constraints, to interpret the language of the 1992 Cable Act and to fashion the implementing regulations to minimize the additional burden placed on small operators. For example, the Commission has provided a blanket waiver of the anti-trafficking rule for systems serving 1000 subscribers or less, as well as exceptions in cases of default, foreclosure and financial distress. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix C of the Report and Order/Further Notice of Proposed Rule Making.

Ordering Clauses

44. Accordingly, *it is ordered*, That pursuant to the authority contained sections 2(a), 4 (i), and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. No. 102–385, part 21 of the Commissions rules, 47 CFR part 21, and part 76 of the Commission's rules, 47 CFR part 76, are amended as set forth in below, and will become effective 30 days after their publication in the **Federal Register**, (except 47 CFR 76.502 (i) which will become effective 90 days after publication in the **Federal Register**).

List of Subjects

47 CFR Part 21

Cable television/multipoint distribution service cross ownership, Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Amendatory Text

Parts 21 and 76 of title 47 of the Code of Federal Regulations are amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.912 is amended by revising paragraphs (a), (b) and (c), and the Notes following paragraph (c), by removing paragraph (d), redesignating paragraphs (e) through (g) as (d) through (f), and by revising the first sentence of newly designated paragraph (f) to read as follows:

§ 21.912 Cable television company eligibility requirements.

(a) Nothwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596–2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area

is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned operated, or controlled by or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of stations in the 2150–2162 MHz and 2596–2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

Note 1: (A) In applying the provisions of this section an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(i) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(ii) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(B) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(C) As used in this section "cable operator" shall have the same definition as in § 76.5.

Note 2: The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with special relief procedures set forth in § 76.7

* * * * *

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. * * *

* * * * *

PART 76—CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

4. The heading of subpart J is revised to read as follows:

Subpart J—Ownership of Cable Systems

5. Section 76.501 is amended by adding paragraphs (d), and (e) to read as follows:

§ 76.501 Cross-ownership.

* * * * *

(d) No cable operator shall offer satellite master antenna television service ("SMATV") separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly, or indirectly through an affiliate owned, operated, controlled, or under common control with the cable system operator.

(e)(1) A cable operator may offer SMATV service within the portion of the franchise area served by the cable operator's cable system only if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of December 4, 1992, or was constructed by the cable operator, and provided that such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(2) A cable operator may either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable operator offer SMATV service in the unserved portions of the franchise area, regardless of whether the cable operator acquires or constructs the SMATV system, provided such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(i) In applying the provisions of paragraphs (d) and (e) an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(A) The single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(ii) The term *area served by a cable system shall mean any area actually passed by a cable system and which can be connected for a standard connection fee.*

(iii) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with the special relief procedures set forth in § 76.7.

6. Section 76.502 is added to subpart J to read as follows:

§ 76.502 Three-year holding requirement.

(a) Except as otherwise provided in this section no cable operator may sell, assign, or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such cable operator.

(b) A transfer of ownership in a cable system that does not affect the identify of the cable franchisee or the holder of a controlling interest in the cable system shall not be subject to the three-year holding requirement.

(c) For initially constructed cable systems the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the cable system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

(d) Cable operators seeking to assign or transfer control of a cable system are required to certify to the local franchise authority that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the franchise authority at the time a cable operator submits a request for transfer approval to the local franchise authority If local transfer approval is not required by the terms of the franchise agreement, certification of compliance with the three-year holding requirement must be submitted to the franchise authority no later than 30 days in advance of the proposed closing date of the transfer or assignment.

(1) Receipt by the local franchise authority of a certification containing a

description of the transaction and indicating that the cable system has been owned for three years, or that the transferror has obtained or is seeking awaiver from the Commission, or that the transaction is otherwise exempt under this section, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.

(2) Franchise authorities questioning the accuracy of a certification filed pursuant to this section must notify the cable operator within thirty (30) days of the filing of such certification, or such certification shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(e) If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfers shall be considered part of the original transaction for purposes of measuring the three-year holding period.

(1) In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within 90 days of the closing date of the original transfer and the date of the closing of the subsequent transaction must be no later than 90 days following the grant of transfer approval by the local franchise authority.

(2) If local transfer approval is not required by the terms of the cable franchise agreement, then a subsequent transfer must be completed within 180 days of the date of the closing of the original transfer in order to qualify as part of the original transaction.

(f) Paragraph (a) of this section shall not apply to:

(1) Any assignment or transfer of control of a cable system which is not subject to Federal income tax liability under the Federal Income Tax Code;

(2) Any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any Federal agency, any State or political subdivision thereof or any franchising authority;

(3) Any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, the seller, assignor or transferror.

(g) The Commission will consider requests for waivers from the three-year holding requirement, consistent with the public interest, and will grant waivers in appropriate cases of default, foreclosure and financial distress. Waiver requests under this section should be filed in accordance with the special relief procedures set forth in § 76.7. Commission waivers will not become effective, however, unless local franchise authority approval of a transfer is obtained if such approval is required by the terms of the franchise agreement.

(1) The Commission will look favorably upon waiver requests involving multiple system operators or transfers of multiple systems if at least two-thirds of the subscribers of the systems being transferred are served by systems owned by the cable operator for three-years or more.

(2) Conditioned upon receipt of local franchise authority transfer approval, where such approval is required by the terms of the franchise agreement or applicable state or local law, transfers of cable systems serving less than 1000 subscribers shall be subject to a blanket Commission waiver.

(h) Cable operators may seek Commission review of franchise authority decisions regarding the application of the three-year holding period to a particular transaction pursuant to the special relief procedures set forth in § 76.7.

(i) Cable system operators seeking to assign or transfer a cable system after three-years must submit a copy of FCC (Form 394) to the local franchise authority if franchise authority approval of the transfer is required by the terms of the franchise agreement.

(1) A franchise authority shall have 120 days from the date of submission of a completed FCC (Form 345), together with all exhibits, and any additional information required by the terms of the franchise agreement, or applicable state or local law to act upon such transfer request.

(2) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting part otherwise agree to an extension of time.

[FR Doc. 93–18652 Filed 8–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–64; RM–8195]

Radio Broadcasting Services; Corning, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C1 for Channel 264B at Corning, California, and modifies the license of Station KCEZ(FM) to specify operation on the higher powered channel, as requested by Phoenix Broadcasting, Inc. See 58 FR 16809, March 31, 1993. Coordinates for Channel 264C1 at Corning are 40–15–31 and 122–05–20. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 13, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–64, adopted July 14, 1993, and released August 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 264B and adding Channel 264C1 at Corning

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–18787 Filed 8–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 88–140; FCC 93–338]

Radio Broadcast Service; FM Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: Before the Commission are petitions for reconsideration of the

Report and Order adopted in this proceeding, which amended the rules governing the FM translator service. By this Memorandum Opinion and Order, the Commission affirms and further clarifies the FM translator rules, including the revised standards for ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. The Commission also adopts minor amendments in the grandfathering criteria and the technical aspects of local program origination.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Mass Media Bureau, (202) 634–6307.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 88–140 adopted June 28, 1993, and released July 28, 1993. 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, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. On November 8, 1990, the Commission adopted a Report and Order (Report), 55 FR 50690 (December 10, 1990), amending the rules governing the FM translator service. The Commission's action restructured the FM translator rules consistent with the intended purpose of providing supplementary service to areas in which direct reception of FM radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers. Before the Commission are petitions for reconsideration filed by the National Association of Broadcasters (NAB), John S. La Tour (La Tour), the National Translator Association (NTA), Klimek Communications Corp. (Klimek), Ed Crook (Crook), and Doyle Brewer (Brewer).[1] By this Memorandum Opinion and Order, we affirm and further clarify the FM translator rules, including the revised standards for: Ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. We also adopt minor amendments in the grandfathering criteria and the technical aspects of local program origination.

2. In the Report, we tightened or clarified several rules after concluding that the proper role for FM translators remains as a secondary service supplementing the service of FM radio broadcast stations. We also modified several rules so that translators could better serve the public. The rule changes sought to ensure that the translator service does not adversely affect the operation of FM radio broadcast stations. First, the coverage contour of a translator providing fill-in service was defined to coincide with the coverage contour of the primary station for the respective station classes. With respect to service issues, we determined that an FM translator may not be licensed to a commercial FM broadcast station if the translator's coverage contour goes beyond the primary station's coverage contour. In "white area" situations, beyond the protected contour of any full-time aural service, we indicated that we would be favorably disposed toward requests for waivers of our rules to permit commercial primary station ownership. Similarly, we determined that commercial primary stations could financially support fill-in translators both before and after the translator commences operation. We also concluded that commercial FM broadcast stations may not provide financial support beyond technical assistance to "other area" FM translators; however, we indicated that we will favorably view waiver requests to allow financial support for translators in "white areas." Noncommercial educational FM (NCE–FM) translators are exempt from these ownership and financial support restrictions.

3. With respect to other service issues, we permitted all translators to use one or more announcements not to exceed a total of 30 seconds per hour in order to acknowledge and solicit funds for operating expenses. We allowed commercial fill-in translators to use any terrestrial means to obtain the primary station signals, with a favorable disposition toward waiver requests for similar permission entertained for "white area" translators. We clarified that licensees may operate multiple FM translators upon showing "need" as determined on technical grounds by the quality of signal received from the intended primary station or any operating translator. We also adopted procedures to resolve mutually exclusive applications. We defined a "major change" for FM translators as any change in output frequency (output channel), or any change or increase (but not decrease) in geographic area that increases the 1 mV/m coverage area by more than 10 percent of the previously authorized 1 mV/m coverage contour. We continued to exempt FM translators from our multiple ownership rules, and also to prohibit AM–FM cross-service translating.

4. Regarding technical issues, we decided to allow all FM translators to operate on any of the 80 commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE–FM translator use. We adopted a maximum ERP standard of 250 watts at low antenna heights (HAAT), and stated that additional antenna height must be traded for reduced power, implemented by new criteria that limit permissible coverage distance. We indicated that we would be favorably disposed toward waiving this rule to permit higher power (up to 250 watts ERP at any HAAT) if applicants demonstrate that the service to a greater distance reaches only a "white area." In order to apply the waiver standard to NCE–FM translators, we decided to construe any area that is not served by a full-service noncommercial educational radio station as a "white area." We clarified the standards for antennas and adopted our proposed prohibited overlap criteria for predicted interference to FM and TV Channel 6 stations. We concluded that existing stations must comply with the new service rules within three years of the effective date of these new rules, and stated that we would entertain waiver requests where service to the public would be unduly lost as a result of compliance. We also "grandfathered" existing translators that do not comply with the new technical rules unless interference problems occur or the licensee of a grandfathered translator seeks to modify its facilities.

5. In the Report, we found that any enhancements to FM service are most efficiently provided by full-service broadcast stations. The prior rules allowed certain uses by FM translators that contributed to the potential for abuse and to the possible detriment of the FM radio broadcast service. We conclude that the new ownership and financial support limitations adopted in the Report will best serve the public interest by promoting incentives for primary station development.

6. The FM translator service is designed to function on a secondary basis in order to supplement the service provided by FM radio broadcast stations. While we have defined

[1] Dan Hendrix and FM Technology Associates, Inc. filed petitions for reconsideration after the 30-day statutory deadline. See 47 U.S.C. 405. 48 CFR 1.106(f). Therefore, the issues raised by these parties are not considered in this proceeding.

"adequately served" and "underserved" areas differently in other Commission regulatory contexts, our definition of "white areas" for the purposes of FM translators is more relevant to the FM translator service's role of filling gaps caused by distance and terrain barriers. The full-service broadcast station concept of an "underserved" area considers a greater number of stations because such stations are our preferred means of achieving broad distribution of radio service. Furthermore, the definition of "underserved" is one used to determine which of several competing proposals for stations would, on a comparative basis, better serve the public interest. Therefore, that definition has little direct relevance to the relationship between full-service and translator service. In addition, the number of entities necessary for establishing effective competition for cable services, is irrelevant to the standard applied in the aural medium. Therefore, we continue to believe that commercial primary stations should be able to own FM translators beyond the station's predicted 1 mV/m coverage contour only if the translator serves a "white area." Independent parties, of course, are permitted to establish FM translators to serve any area as desired.

Service Issues

7. The new ownership rules allow commercial FM broadcast stations to own a translator only when the translator's coverage area is entirely within the primary station's coverage contour. The rules do not allow ownership of "other area" FM translators by any entity "interested in or connected with" the licensee of a primary station. We stated that we would view favorably waiver requests to permit commercial primary station ownership of translators providing "other-area" coverage for "white areas."

8. We conclude that the record does not support that a "white-area" exception to our ownership rule would substantially improve public service in comparison to a waiver process. We find that the waiver process more appropriately addresses the unique needs of "white areas" by permitting the Commission to engage in thorough oversight of situations where primary stations continue to own "other area" FM translators. Therefore, where a licensee establishes that service is indeed unavailable in the absence of a translator, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. We also wish to clarify that we will be especially reluctant to grant a request for authorization "other-area" translator unless the party requesting the authorization states affirmatively that the translator is not sought as part of a reciprocal arrangement with another primary station, whereby the primary stations seek translator authorizations in order to rebroadcast each other's signals. Such arrangements would present substantial potential for abuse and would undermine our new service rules.

9. Under the new financial support rules, fill-in translators may be supported financially by the primary station before and after beginning operations. However, "other area" translators cannot receive support, either direct or indirect, from commercial primary stations or interested parties at any time except for technical assistance. The Commission will favorably consider waiver requests for commercial FM primary station support of other area translators serving "white areas."

10. We affirm our decision to prohibit a commercial primary station from providing direct or indirect financial support to any FM translators serving "other areas," both before and after they commence operation, except for technical assistance. Also, we will maintain a favorable disposition toward requests for waivers of this rule to permit a commercial primary station to support any translator providing service to "white areas." We continue to believe that the revised financial support rule is necessary to ensure that translators owned by a commercial station seeking to increase its coverage are used only to provide FM service to areas and populations that are unable to receive satisfactory FM signals due to distance or intervening terrain barriers.

11. In the Report, the Commission dismissed arguments favoring only limited constraints upon financial support for FM translators. As noted in the Report, we believed that an expanded translator service could provide disincentives for the establishment of boardcast stations, relative to translator facilities, since translators have no local service obligations and generally operate at significantly lower cost. Therefore, we affirm our prior determination that the new rules will help ensure that FM translators remain limited to a supplementary role so as not to discourage full-service radio broadcast station development of additional formats and service to the public.

12. We also reject the proposal for a $200 per month limit on acceptable financial support combined with reporting requirements. This would create a substantial burden for both licensees and the Commission due to the additional oversight and review necessitated by such filings. In response to the concern that listeners may not contribute funds despite benefiting from the translator's service, we emphasize that the new rules provide for waivers of the "grandfathering" period upon a showing by the licensee that the public would lose service as a result of compliance with the rules. Given that many of the potential abuses by translators would arguably occur by primary stations providing support in the form of "indirect services", we conclude that the public is better served by the limitations established in the new rules. In addition, we reiterate that communities seeking additional service and formats will have the opportunity to fund FM translator service under the new rule through their independent charitable support.

13. We stated in the Report that "technical assistance" by primary stations will be excepted from the indirect financial support proscription. We affirm this decision and clarify that "technical support" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Such support does not include the supply of equipment or direct funding for the translator's discretionary use. We also reiterate that technical assistance by the primary station should occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment. We continue to believe that these maintenance expenses may become prohibitive given the limited financial resources of many FM translators, and that limited technical assistance by the primary station will enable translators to continue to provide valuable service to the public.

14. The new fundraising rules permit FM translators to air one or more fundraising announcements or advertisements per hour totalling 30 seconds in length. We reaffirm the rule limiting on-air fundraising activities by FM translators to 30 seconds of announcements within an hour. We continue to believe that the 30-second period is an adequate opportunity for FM translators to acknowledge contributions as well as to solicit funds from their listeners as necessary. We also affirm our decision in the Report that the solicitations or announcements may be split during the hour. We continue to believe that it is unnecessarily restrictive to regulate how translators should allocate their 30

seconds of announcements within an hour.

15. We deny the request that announcements should be restricted in form to "enhanced underwriting" messages. In order to encourage donations from independent sources, translators must be able to provide some information about their contributors. We find it unnecessary to limit the content of these brief announcements. Also, while the new rules no longer require FM translator licensees to operate non-profit facilities, the record before us does not indicate that translators will be able to earn substantial profits. In addition, we find that the scenario under which a primary station's advertisers could be enticed to provide financial support to a translator in return for reduced advertising rates—would violate the "indirect support" prohibition.

16. In the Report, the Commission retained its limitation on local program origination to 30 seconds per hour for fundraising and acknowledgement of contributions. Emergency warnings of danger are limited in time and frequency to that necessary to protect life and property. Translators owned by parties other than the primary station must obtain written consent for the rebroadcast of the FM radio broadcast station signals.[2] We also retained the rule that prohibits the retransmission on translators of signals other than those emanating from FM full-service or translator stations.

17. We reaffirm the rules prohibiting program origination by all translators, commercial and NCE–FM, with the exception of acknowledgements or solicitations of financial support as well as emergency warnings of danger. In the Report, we emphasized that the proper role of FM translators is to provide secondary service to areas where direct reception of signals from FM Broadcast stations is unsatisfactory due to distance or intervening terrain obstructions. We remain committed to providing FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient full-service broadcast station development. Therefore, we intend to maintain the existing programming authority distinctions between FM broadcast stations and translator services.

18. We note that the rules concerning the permissible sources of input channels for FM translators are not intended to restrict programming content. Rather, where there is sufficient community interest, the rules permit translators to rebroadcast any programming broadcast by a primary FM station, thereby affording translators an opportunity to import programming formats otherwise unavailable. Thus, rebroadcasts of the aural portion of a TV or cable signal would be permitted if such a signal were first rebroadcast by a full-service FM station, but not solely by a translator. Once again, we believe that it is necessary to distinguish between the services provided by low cost translators and FM radio broadcast stations due to our preference to provide service through more efficient radio broadcast stations.

19. The Report provides that fill-in translators of commercial primary stations may now use any terrestrial delivery means to obtain the signal from the primary station. "Other-area" translators, however, may only use off-air delivery, although we indicated that we will favorably consider waiver requests to permit signal delivery by any terrestrial means for translators serving "white areas." We believe that any further extension of signal delivery alternatives for "other area" translators would be inconsistent with the secondary role of FM translators in the commercial context. The Report extended permission for fill-in translators to use alternative signal delivery on the grounds that other terrestrial means would conceivably be necessary to circumvent the terrain or other barriers that prevent otherwise expected over-the-air delivery of an FM signal to the translator. As for "other-area"translators, however, there is no similar expectation, especially at large distances, such as 70 to 80 miles from the station. We continue to believe that, to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast, although certain white-area situations may warrant a waiver to permit alternative signal delivery methods. Moreover, we believe that the signal delivery provisions in the Report will eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of "other area" translators financed by primary stations would work to limit the economic viability of such stations. Furthermore, we do not believe that allowing alternative signal delivery for "other area" NCE translators owned by their primary stations requires that we do the same for commercial translators. We have long recognized that NCE–FM and commercial licensees participate in fundamentally different broadcast services. Therefore, we continue to believe that we are not required to apply the same standards for signal delivery to NCE–FM and commercial licensees.

20. A "major change" is defined in the Report as occurring due to any change in output frequency (output channel), or any change or increase (but not decrease) in 1 MV/m coverage area of more than 10 percent of the previously authorized coverage contour. We continue to believe that our definition for "major change" appropriately covers those changes in technical parameters and coverage areas that are significant. The standard also allows licensees sufficient flexibility to make minor technical and facility changes that cause negligible changes in signal patterns. In addition, we believe that changes in coverage areas in excess of 10% could have significant public interest implications. For example, FM translators have an obligation to protect audiences beyond the defined service areas of full service FM stations, and such information is not available in an FM translator application itself. The greater the change in the translator's coverage area, the higher the risk that the audience of a full service station will be affected. Accordingly, changes in coverage area in excess of 10% are appropriately considered "major changes."

21. We also reject the request to include a change in input channel or primary station as a major change criterion. A change in the input channel does not alter a translator's technical parameters because the coverage area, output channel, and potential for creating interference remain identical. While a change in the output frequency is a significant technical change, the input channel is essentially a programming content decision that is not significant with respect to the public interest. Furthermore, to the extent that a translator changes its primary station in a manner that does not clearly comply with our rules, we note that the matter is more appropriately a question for our enforcement function rather than the application process.

Technical Issues

22. As decided in the Report, an FM translator's maximum power output will be limited to 250 watts ERP. In addition, the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station. "Other-area" translators will be restricted to power and height combinations that yield a distance to the translator's coverage contour that does not exceed 7 km in Zone I–A and east

[2] 47 CFR 74.1284(b). 47 U.S.C. 325(a).

of the Mississippi River, and 13 km elsewhere. The Commission will be favorably disposed toward waiving this rule to permit higher power up to 250 watts at any antenna height if the service to a greater distance reaches only a "white area."[3]

23. The Commission's new maximum power limits recognized that translators must deliver broadcast signals to small and distant service areas with the minimum necessary power. However, we observed that many translators were already constructed more than 16 km from the area of service and utilized power output in excess of 250 watts. As a result, the 250 watt maximum ERP standard and the grandfathering provisions will promote the fundamental purpose of FM translators while also accommodating most existing authorized facilities. Although we originally proposed a 1 kW ERP limit with a distance to the coverage contour not to exceed 16 km, we observed that most licensees are already in compliance with the lower adopted power standard as well as the 7 km and 13 km distances to coverage contours. For these reasons, the Commission affirms its decision not to expand the maximum power limits so as not to contradict the intended purpose of the FM translator service. We continue to believe that service similar to large or high-power translator stations should be provided by full-service stations. Nonetheless, we emphasize that existing facilities that are not in compliance with the new maximum power standards are grandfathered until actual interference occurs or licensees propose to make changes in their facilities.

24. In the Report, we adopted a contour overlap method for predicting interference with translator applicants permitted to show that interference will in fact not occur. We will grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received, off-the-air existing service, even if there is no predicted overlap. This revised method for predicting interference incorporates greater processing flexibility through population and terrain exceptions. Complaints of actual interference must be resolved by the FM translator.

[3] For NCE–FM translator applications, white areas are defined as "any area that is not served by a full-service public radio station." See 5 FCC Rcd 7227 (1990). By using the term "public radio," we did not intend to exclude from the relevant stations those noncommercial stations not affiliated with the National Public Radio or American Public Radio networks.

25. We reject the suggestion to require applicants to include exhibits demonstrating compliance with our interference limits because it would create an unnecessary burden on applicants. We find that the proposal is unnecessary because we will continue to perform interference studies to determine whether applicants comply with the new rules. We also recognize that due to their limited financial and technical means, many FM translator licensees may require the flexibility of determining compliance with the interference rules without detailed analyses as part of their applications. Due to the secondary nature of the service, we reiterate that FM translator licensees must adjust their operations following instances of actual interference.

Other Matters

26. Licensees authorized prior to June 1, 1991[4] may continue to operate without conforming with the new technical rules, provided that no actual interference occurs and the translator does not propose to modify its facilities. If actual interference develops or the translator seeks to modify its facilities, translators must satisfy the new technical standards concerning interference protection for FM broadcast and TV channel 6 stations, as well as the new power limitations. With respect to the service rules, compliance by existing FM translators will be required in three years, and requests for waivers will be considered if licensees show that the public would unduly lose service as a result of compliance with the new rules.

27. In adopting the Report's three-year grandfathering provision for compliance with the service rules, we emphasized the limited resources of many FM translator licensees and the burden that could result if we were to require accelerated compliance with the new financial support standard. We therefore deny the request to reduce the grandfathering period for the service rules based upon our desire to promote an orderly transition to the new rules and to avoid an unnecessary disruption of service to the public. We also conclude that an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role. Instead, we continue to believe that the Report's provision for extended waivers will adequately prevent the public from unduly losing service in unique circumstances.

28. We wish to clarify that the "other-area" translators that are temporarily "grandfathered" with respect to the ownership and financial support provisions of the new rules will not be required to comply with the new service rules for the remainder of the three-year period if the translator changes its primary station. We believe that a change in the primary station will reflect the preferences of local audiences in the community without altering the technical aspects of a translator's operation, and should ensure that translators constructed based on expectations formed under our prior rules will have sufficient time to adjust their operations.

29. We also amend the grandfathering provision concerning the technical rules by specifying that FM translators authorized prior to the effective date of the rules must comply with the full scope of the technical requirements when they implement a "major change modification or if they cause interference. Such FM translators seeking "minor changes" may continue to operate without complying with the technical rules provided that they satisfy the standards for actual interference. We have affirmed that translators proposing modifications that would not change or increase the 1 mV m coverage area by more than 10 percent are not subject to the "major change" review process. Similarly, we believe that it would be unduly onerous to require compliance with all the technical rules in instances where modifications do not significantly increase the translator's coverage area.[5]

30. We are amending § 74.1204(g) of our rules to state standards for the treatment of FM translators based on ERP, so that they are consistent with the minimum permissible power level for Class A FM stations, and the treatment of other secondary FM services.[6]

[4] The amended rules governing the FM translator service became effective on June 1, 1991. See Order, 47 FR 23024 (May 22, 1991). Applications pending as of June 1, 1991 can be granted only under the terms of the new service and technical requirements and must be amended to conform with the new rules. See Report, 5 FCC Rcd 7233 (1991). We allowed pending applicants 60 days to file amendments demonstrating compliance with the new rules. We now believe, however, that this 60-day period was too restrictive, and we will allow pending applicants to file conforming amendments upon notification by the processing staff. Applicants must use a revised FCC Form 349.

[5] In this regard, we also correct the text of the Report, which states in paragraph 142 that FM translators causing interference or proposing to modify facilities must comply with only the predicted interference standards in § 74.1204, rather than §§ 74.1204, 74.1205, and 74 1235 of the rules

[6] See Order, FCC 91–317 6 FCC Rcd 6060 (1991 56 FR 56169, November 1, 1991, reconsideration pending.

Translators operating with less than 100 watts ERP will be treated as Class D stations and will not be subject to IF separation requirements. We believe that adjusting this requirement to this extent, given the totality of the safeguards adopted in this proceeding, is consistent with our fundamental concern with preventing interference, and we emphasize that the secondary nature of the FM translator service will require correction of any actual interference.

31. The Report adopted a contour protection method for protecting existing translator licensees against potential interference. In order to implement this approach, we are entering the technical parameters of each FM translator station into the Commission's data base. We have found that many licensees and permittees have inadequate information currently on file for our use. Accordingly, we are requesting by letter that such licensees furnish data necessary to implement the Report. In order to ensure that a licensee's failure to provide the requested information does not unduly hamper the functioning of our licensing process, we are, on our own motion, amending § 74.1235 to establish specific mileage contours consistent with a translator station's power for those licensees that fail to submit the requested data. We note that this procedure is similar to that followed in updating our data bases for low-power television and TV translators, and we believe that it will enable us to effectively implement changes in our rules that affect existing translator licensees. We also do not believe that public comment would serve a useful purpose because this action is a minor and noncontroversial process to facilitate our efforts to gather information. However, we recognize that licensees may fail to submit the requested data and later conclude that the hypothetical values applied for their facility are unacceptable. In such instances, licensees may submit corrected figures for our use in protecting translators against potential interference.

32. In the Report, we adopted contour overlap standards to protect TV Channel 6 operations from FM translator operations. These standards were generally consistent with the NCE–FM broadcast station rules. However, Section 73.525(a) of the NCE–FM broadcast station rules permits NCE–FM broadcast applicants whose stations would potentially affect TV Channel 6 broadcast operations to file written agreements with each relevant TV Channel 6 broadcast station concurring with the proposed facilities. The new rule for translators lacked such a provision but we find no reason to omit a similar provision from the translator rules. On our own motion, we will add a provision to Section 74.1205 of the rules to indicate that we will accept FM translator applications that are accompanied by written agreements with all relevant TV Channel 6 broadcast station licensees or permittees.

Final Regulatory Flexibility Analysis

33. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substitute changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

34. The Secretary shall send a copy of the Memorandum Opinion and Order, including Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981)).

Ordering Clause

35. Accordingly, it is ordered that the Petitions for Reconsideration filed by the National Association of Broadcasters, the National Translator Association, Ed Crook, Klimek Communications Corporation; John S. La Tour, J and J Broadcasting, and Power du Pree Broadcasting Corporation; and Doyle Brewer are denied.

36. It is further ordered that pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations are amended as set forth below, effective September 7, 1993.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47 CFR part 74 is amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.1204 is amended by revising paragraphs (g) and (j) to read as follows:

§ 74.1204 Protection of FM broadcast stations and FM translators.

* * * * *

(g) An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in § 73.207 of this chapter. For purposes of determining compliance with § 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with §§ 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.

* * * * *

(j) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with provisions of this section.

3. Section 74.1205 is amended by adding an introductory paragraph and revising paragraph (d) to read as follows:

§ 74.1205 Protection of channel 6 TV broadcast stations.

The provisions of this section apply to all applications for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201–220, unless the application is accompanied by a written agreement between the NCE–FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with

the proposed NCE–FM translator facility.

* * * * *

(d) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

4. Section 74.1231 is amended by revising paragraph (f) to read as follows:

§ 74.1231 Purpose and permissible service

* * * * *

(f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements. The radio frequency signals shall be on the same channel as the normally used off-the-air signal being rebroadcast. Connection of the locally generated signals shall be made by any automatic means when transmitting originations concerning financial support. The connections for emergency transmissions may be made manually. The apparatus used to generate the local signal that is used to modulate the FM translator must be capable of producing an aural signal which will provide acceptable reception on FM receivers designed for the transmission standards employed by FM broadcast stations.

* * * * *

5. Section 74.1232 is amended by adding two sentences to paragraph (d) and adding three sentences to paragraph (e) and accompanying Note to paragraph (e) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) * * * An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) * * * Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to June 1, 1991 may continue to receive contributions or support from a commercial FM radio broadcast station for the operation and maintenance of the translator station until June 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

Note: "Technical assistance" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Conversely, such support must not include the supply of equipment or direct funding for the translator's discretionary use. "Technical assistance" must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.

* * * * *

6. Section 74.1235 is amended by adding a note to paragraph (i) and revising paragraph (j) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(i) * * *

Note: Existing licensees and permittees that do not furnish data sufficient to calculate the contours in conformance with § 74.1204 will be assigned protected contours having the following radii:

Up to 10 watts—1 mile (1.6 km) from transmitter site.

Up to 100 watts—2 miles (3.2 km) from transmitter site.

Up to 250 watts—4 miles (6.5 km) from transmitter site.

(j) FM translator stations authorized prior to June 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, provided that operation is in conformance with § 74.1203 regarding interference. Applications for major changes in FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

7. Section 74.1237 is amended by revising paragraph (d) to read as follows:

§ 74.1237 Antenna location.

* * * * *

(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to Note, § 74.1231 (h). The transmitting antenna of a commonly owned commercial FM translator station shall be located within the protected contour of its commercial primary FM station.

[FR Doc. 93–18776 Filed 8–5–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1019 and 1102

[Ex Parte No. 515 (A)]

Regulations Governing Conduct of Interstate Commerce Commission Employees

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission (ICC) is reissuing these regulations, which were previously part of the ICC's Canons of Conduct (Canons) for Members and employees. These regulations, which cover matters not included in the Standards of Ethical Conduct for Employees of the Executive Branch (standards) issued by the Office of Government Ethics (OGE), are intended as guidance for ICC Members and employees.

EFFECTIVE DATE: These regulations are effective August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927–6317. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE published new standards of ethical conduct for employees of the executive branch (codified at 5 CFR part 2635) which became effective on February 3, 1993. The ICC Canons in subparts B and C of 49 CFR part 1000 have been superseded by those standards and by the new executive branch financial disclosure regulations. (They have been repealed in a separate rule.) However, an agency may retain regulations previously contained in its ethics rules, which are not within the ambit of the OGE standards. 5 CFR 2635.105(c)(3).

The ICC, therefore, has established a new part 1019 of title 49 of the Code of Federal Regulations that will contain those Canons that the ICC intends to continue in effect, as follows: Section 1019.1 contains a cross reference to the OGE standards in 5 CFR part 2635, the Commission's supplemental ethics rules in 5 CFR part 5001 and the financial disclosure regulations in 5 CFR part 2634.

Section 1019.2 covers the administration of the Commission's ethics program and references the recent

designation of the Managing Director's Counsel as the ICC's Designated Agency Ethics Official (DAEO).

Sections 1019.3–1019.6 contain restatements of the Commission's prior Canons on ex parte communications, the use of intoxicants, sexual harassment, and disciplinary action for violations.

The Commission also is amending 49 CFR 1102.2(e) to state that the DAEO, rather than the General Counsel, is responsible for providing rulings to ICC staff on matters concerning ex parte communication.

Administrative Procedure Act

The ICC has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) for waiving, a general notice of proposed rulemaking and 30-day delay in making these regulations effective. They are essentially a restatement of previous ICC Canons and the ICC believes that it is in the public interest for them to become effective as soon as possible. Furthermore, this rulemaking is related to the ICC's organization, procedures and practice, which are not subject to the notice and comment procedures.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only ICC employees.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1019

Government employees.

49 CFR Part 1102

Administrative practice and procedure.

Decided: June 29, 1993.

By the Commission, Chairman McDonald Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is amended as set forth below.

1. A new part 1019 is added to read as follows:

PART 1019—REGULATIONS GOVERNING CONDUCT OF INTERSTATE COMMERCE COMMISSION EMPLOYEES

Sec.

1019.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
1019.2 Interpretation and advisory service.
1019.3 Ex parte communications.
1019.4 Use of intoxicants.
1019.5 Sexual harassment.
1019.6 Disciplinary and other remedial action.

Authority: 49 U.S.C. 10321.

§ 1019.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Members and employees of the Interstate Commerce Commission also should refer to the executive branch Standards of Ethical Conduct at 5 CFR part 2635, the ICC regulations at 5 CFR part 5001 which supplement the executive branch standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 1019.2 Interpretation and advisory service.

(a) The Managing Director's Counsel shall be the Commission's Designated Agency Ethics Official (DAEO).

(b) By June 30 of each year, the DAEO shall report to the Commission on the operation of the Commission's ethics program with any recommendations that the DAEO deems advisable.

§ 1019.3 Ex parte communications.

Members and employees of the Commission must conform to the standards adopted by the Commission in 49 CFR 1102.2.

§ 1019.4 Use of intoxicants.

Members and employees of the Commission shall not use alcohol, drugs, or other intoxicants so as to impede the discharge of their official duties.

§ 1019.5 Sexual harassment.

(a) Members and employees shall not engage in harassment on the basis of sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, offensive, or unpleasant working environment.

(b) Employees and applicants may follow the standard Equal Employment Opportunity Commission complaint process if they believe they have a work-related sexual harassment problem. This requires that the employee or applicant contact an EEO Counselor within 45 days of the alleged harassment or, if a personnel action is involved, within 45 days of its effective date.

(c) The regulations in this section apply also to harassment based on race, color, religion, or national origin.

§ 1019.6 Disciplinary and other remedial action.

Any violation of the regulations in this Part by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the ICC's Manual of Administration 22–751, which may be in addition to any penalty prescribed by law. The manual is available from the Office of the Managing Director, Interstate Commerce Commission, 12th Street and Constitution Ave., NW., Washington, DC 20423.

PART 1102—COMMUNICATIONS

2. The authority citation for part 1102 continues to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1102.2 [Amended]

3. In § 1102.2 paragraph (e) is amended by removing the words "General Counsel" and adding in their place the words "Designated Agency Ethics Official" in the 4 places they appear in that paragraph.

[FR Doc. 93–18870 Filed 8–5–93; 8:45 am]
BILLING CODE 7035–01–P–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 930514–3195; I.D. 042093B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

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

ACTION: Final subsistence harvest estimates for subsistence fur seal harvest on the Pribilof Islands.

SUMMARY: Regulations governing the subsistence taking of northern fur seals

require NMFS to publish a summary of the previous year's fur seal harvest and to project the number of seals expected to be taken in the current year to meet subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. NMFS published that notice on June 14, 1993. Following a 30-day comment period, NMFS is publishing this final notice of the expected harvest levels for 1993 as follows: St. Paul Island: 1,645–2,000; St. George Island: 281–500.

EFFECTIVE DATE: August 6, 1993.

ADDRESSES: Dr. William W. Fox, Jr., Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Zimmerman (907) 586–7235 or Mr. Michael Payne, (301) 713–2332.

SUPPLEMENTARY INFORMATION:

Background

The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the MMPA (50 CFR 216.15(c)). The subsistence harvest of northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes, and has been regulated to minimize negative effects on the population. These regulations were published under the authority of the Fur Seal Act (FSA), 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA) 16 U.S.C 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Aleuts using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The purpose of the annual notice is to provide subsistence estimates for the current year's harvest for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determines that the subsistence needs of the Aleut residents of either of the Pribilof Islands have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

Response to Comments

NMFS received one set of comments on the proposed 1993 fur seal subsistence estimates from the Humane Society of the United States (HSUS).

Comments: The comments of HSUS were: (1) The 1993 fur seal subsistence estimates proposed by NMFS are unjustified and should be reduced, and (2) the estimates reflect continued approval (by NMFS) of waste. HSUS maintains that NMFS has adopted an uncritical approach toward its MMPA responsibilities to protect the depleted Pribilof Island population of northern fur seals, and that NMFS has officially approved historical wasteful seal killing. NMFS has proposed the same estimates of subsistence need for each of the Pribilof Islands for 1993 as were proposed in 1992. The HSUS restated their position that the 1992 estimates were arbitrary and unsupported (HSUS referenced their 1992 comments in response to the May 28, 1992, estimates of subsistence need (at 57 FR 22450)), and should not be repeated in 1993.

The HSUS maintains that NMFS has proposed an excessive kill level based on wasteful practices. Under the MMPA and FSA, subsistence harvesting is restricted to nonwasteful subsistence needs. HSUS maintains that NMFS has institutionalized regulations regarding nonwasteful subsistence use based on harvesting practices carried over from the period of commercial harvest when only the choicest cuts of meat were taken for human consumption. The HSUS is concerned that more seals are killed than necessary for subsistence.

Response: "Wasteful manner" is defined in the MMPA regulations at 50 CFR 216.3. Similarly, "wasteful manner" is also defined under the Fur Seal regulations at 50 CFR 215.2. The two definitions are functionally similar with the exception that the definition of wasteful manner (in the Fur Seal regulations) is restricted to the taking of fur seals on the Pribilof Islands for subsistence need. In promulgating regulations for the subsistence fur seal harvest, NMFS indicated those parts of a fur seal that should be taken in order to ensure that a "substantial portion" of each animal is taken. The preamble to the final regulations (at 51 FR 24828, July 9, 1986) stated that "* * * NMFS considers the removal and consumption of the following seal parts to constitute substantial use which would be consistent with the requirements that the taking of seals not be accomplished in a wasteful manner: All hearts, livers, flippers, breasts, shoulders, and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections."

The "some, but not necessarily all" language was not written to infer that "some" has to be removed from each animal killed in the harvest, but rather, that a harvest that ensures that backbones and ribs are removed from a percent of the total number of fur seals harvested during each day, satisfies this requirement. The HSUS interprets this to require utilization of these portions from each animal harvested.

In order to monitor compliance with the prohibition on taking in a wasteful manner, NMFS determines the extent of the utilization of fur seals taken. Since 1986, 10–20 percent of all fur seals killed have been sampled on a daily basis to determine the percent-use of the animals taken for subsistence need on St. Paul Island. During the 1987 harvest, 101 carcasses were weighed before and after butchering had removed the front flippers, shoulders, breasts, hearts and livers. A mean 29.1 percent of each animal was dressed out under these circumstances (53 FR 17773, May 18, 1988). This has been commonly referred to as the average percent-use value. An additional 83 seals were weighed before and after virtually all consumable parts had been removed (i.e., everything was taken except for the pelt, blubber, skull, neck, inedible internal organs, and body fluids). A mean 53.3 percent of each animal was dressed out under these circumstances (53 FR 17773 May 18, 1988). Thus, it was determined that the range of percent-use values between animals that have been butchered to remove only selected parts, and animals that have been butchered to remove virtually all consumable parts, lies between 29.1 and 53.3 percent of the initial carcass weight. Since the subsistence harvest has been monitored, each of the annual mean values for percent-use has fallen between these two values. Likewise, with the exception of one day in 1987, all of the mean daily-use estimates (n=146) have fallen between these values. NMFS observers have concluded that the harvest is being conducted in a nonwasteful manner.

NMFS data indicate that there has been a decline in the estimated percent-use of fur seals in recent years. The HSUS contends that this decline reflects a decrease in the number of fur seals being butchered with the whole-cut technique, and represents a waste of a substantial portion of the animals resulting in unnecessary takes of fur seals. In 1992 the NMFS Alaska Region staff analyzed subsistence data to determine if waste of a substantial portion of the animals has resulted. The center of the controversy on whether the harvest is being conducted in a "wasteful" versus "nonwasteful" manner focuses on whether or not the "butterfly cut" method of butchering is

interpreted as a "wasteful manner" as defined in the regulations. The difference between the "butterfly" cut and the other butchering technique, the "whole cut", involves whether the ribs, the backbone, and hindquarters are taken.

In 1992, the whole carcass, as well as the weight of each major body part (breast, shoulder, arm, ribs, backbone, and hindquarter as well as heart, liver, front flippers, rear flippers, head, guts and pelt), was weighed to determine the proportion of edible meat that was available from the different parts of the body for each of six fur seals. Meat, bone, and fat were separated and weighed for each of these body components. The mean of the weights of the parts taken in a "whole cut" (shoulder, breast, arm, front flippers, heart, liver, ribs, backbone, hindquarters) totalled 54.9 percent of the beginning weight of the seals. The sum of the means observed for the parts constituting a "butterfly cut" (shoulder, breast, arm, front flippers, heart, liver) was 32.5 percent. It is these two values that are commonly referred to as the average percent-use for each of the two butchering techniques. However, bone and inedible tissue are major components of several of these parts. Also, much of the meat in these parts consists of a large percentage of connective tissue, which is considered minimally edible. Using mean values, the total amount of edible meat available from a "whole" cut seal was 29.6 percent (range 26.8–31.6) of the beginning weight of the animal. The total amount of edible meat from a "butterfly" cut seal was 21.1 percent (range 18.9–23.4) of the beginning weight of the animal. Therefore, although the average difference between the "percent-use" weight of parts taken in a whole versus butterfly cut is greater than 20 percent, the difference in the amount of edible meat between the two butchering techniques is approximately 8–9 percent of the original body weight of the animal. Thus, at a minimum, the argument that the "whole" cut results in more meat being made available for subsistence use, than does the "butterfly" cut, is exaggerated.

The apparent decrease in the average percent-use values during the past years does reflect a decreased use of the whole-cut butchering technique, as indicated by NMFS data and HSUS comments. However, it does not indicate taking in a "wasteful manner" but instead represents a practical reluctance by the Pribilof Aleuts to utilize the bony parts of the fur seal from which very little usable meat can be obtained.

The HSUS also maintains that the present harvest level does not reflect the "true" subsistence need on the Pribilof Islands. The HSUS is correct in stating that, at the time that the subsistence harvest replaced the commercial harvest, the Aleut dietary requirements for fur seal meat, the specific number of seals, and the amount of seal meat needed to meet dietary requirements were unknown. One of the last true subsistence periods on St. Paul Island occurred during 1912–1916. The commercial harvest was not allowed during those years, and the data were kept on the number of animals taken for subsistence purposes. It is apparent that the number of fur seals taken each year on St. Paul Island during 1912–1916 (range 1,764–3,483) was significantly higher than is presently being requested even though the human population on St. Paul Island at that time was less than one half of the present population. Thus, available information does not indicate that the present number of fur seals taken for subsistence on the Pribilof Islands is beyond that taken for traditional subsistence need.

In summary, the subsistence harvest of northern fur seals in the Pribilof Islands has been monitored every year since 1985. In 1992, NMFS conducted an examination of the precent-use values taken from a systematic sample of fur seals harvested between 1986 and 1991 to determine trends in percent-use and to determine causes for the observed differences in percent-use values during each year of the harvest, specifically with regard to changes in the relative numbers of seals taken by "butterfly" and "whole" cuts. The analysis of weights of parts taken in the subsistence harvest using the "butterfly" versus "whole" cut indicates that a substantial portion of each fur seal harvested is being used for subsistence purposes, but that there is some amount of meat available on parts not taken with the butterfly cut (ribs, backbone, hind quarter). However, such parts are very bony and the meat consists, in large part, of inedible connective tissue. The monitoring procedures followed during each annual harvest ensures that substantial portions of all fur seals harvested are removed and consumed, and that the harvest is conducted consistent with the requirement that the taking of seals be accomplished in a nonwasteful manner. No evidence of a pattern of takes beyond those needed for subsistence has been observed.

Subsistence Harvest Estimates for 1993

NMFS published a notice that summarized the 1992 harvest, and proposed a range of subsistence need estimates for 1993 (FR 32892, June 14, 1993). Based on the evidence presented to NMFS to date, NMFS proposed that the lower bound of the harvest estimate for northern fur seals on St. Paul Island in 1993 remain at 1,645 (the same as that in 1992). If the Aleut residents of St. Paul Island reach the lower limit of the estimated range of animals during the 1993 harvest, and still have unmet subsistence needs, they may request an additional number of seals, up to a harvest total of 2,000 fur seals. On St. George Island, the proposed lower bound of the estimate of subsistence need in 1993 also remained at 1992 levels, 281 fur seals. If the Aleut residents of St. George Island reach the lower level of estimated need during the 1993 harvest, and still have unmet subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991 and 1992 harvests).

Between June 23 and August 8, 1993, the Aleut residents of St. Paul and St. George Islands may harvest up to the lower bound of the applicable estimate. If, at any time during the harvest, the lower estimate of subsistence need for an island is reached, the harvest must be suspended for no longer than 48 hours pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. At such time, the Pribilof Aleuts may submit information indicating that subsistence needs (for either island) have not been met. This information should be submitted as quickly as possible, optimally at the same time notice is given that the lower end of the harvest estimate has been reached in order to assure that the required harvest suspension lasts no longer than 48 hours. If the Pribilof Aleuts substantiate an additional need for seals, and there has been no indication of waste, the Assistant Administrator may authorize the take of additional seals up to the number required for subsistence purposes. If additional information is not submitted by the Pribilof Aleuts, the Assistant Administrator will consider only the information in the record at the time of the suspension. It is very likely, under these circumstances, that the revised subsistence estimate will remain the same as the original estimate. If that is the case, no additional takings would be authorized.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties,

Pribilof Islands, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–18815 Filed 8–3–93; 2:01 pm]

BILLING CODE 3510–22–M

50 CFR Part 216

[Docket No. 930793–3193; I.D. 071293B]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), announces that the Government of Spain has submitted documentation to indicate that it is in compliance with the yellowfin tuna importation regulations for harvesting nations that have acted to ban purse seine sets on marine mammals in the eastern tropical Pacific Ocean (ETP). NMFS has issued an affirmative finding that will allow yellowfin tuna and yellowfin tuna products to be imported into the Untied States from Spain through December 31, 1993, if and when the intermediary nation embargo on all yellowfin tuna and yellowfin tuna products from Spain has been lifted.

DATES: This finding was effective July 16, 1993, and remains in effect through December 31, 1993, or until further notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, or by telephone at 310–980–4000, or by FAX at 310–980–4018.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA) prohibits the importation of yellowfin tuna and yellowfin tuna products into the United States from the ETP unless the harvesting nation has a marine mammal regulatory program comparable to that of the United States (16 U.S.C. 1371(a)(2)(B)). A nation that prohibits its vessels from intentionally setting on marine mammals in the course of harvesting yellowfin tuna by purse seine in the ETP may request that NMFS make an affirmative finding under the yellowfin tuna import regulations (50 CFR 216.24(e)(5)(viii)). With an affirmative finding, yellowfin tuna and yellowfin tuna products harvested in the ETP by purse seine vessels of that nation will not be subject to a "primary nation embargo" on importation into the United States.

Spain has purse seine vessels of 400 short tons (362.8 metric tons) carrying capacity or greater fishing for yellowfin tuna in the ETP. Without an affirmative finding, Spain is subject to a "primary nation embargo" of its ETP yellowfin tuna and yellowfin tuna products harvested by purse seine. Spain has provided to the United States: (1) A list of its vessels participating in the ETP purse seine fishery; (2) a copy of Spanish law prohibiting Spanish vessels from intentionally setting purse seine on marine mammals; and (3) assurances that its purse seine vessels are accompanied by observers. Based on this documentation, the Assistant Administrator, after consultation with the Department of State, has made an affirmative finding for Spain under 50 CFR 216.24(e)(5)(viii), effective through December 31, 1993. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested by Spanish-flag purse seine vessels operating in the ETP will not be subject to a primary nation embargo on importation into the Untied States.

This affirmative finding does not affect the status of Spain as an intermediary nation, or the lifting of the intermediary nation embargo on all yellowfin tuna and yellowfin tuna products from Spain. To have the intermediary nation embargo lifted, Spain must provide certification and documentary evidence that it has not imported, in the preceding 6 months, yellowfin tuna subject to a direct ban on importation into the United States. Once the appropriate documentation has been submitted and the intermediary nation embargo removed, this affirmative finding for Spain as a harvesting nation will allow yellowfin tuna and yellowfin tuna products harvested by Spanish-flag purse seine vessels to be imported into the United States.

Dated: July 30, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 93–18819 Filed 8–5–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 661

[Docket No. 930402–3134, I.D. 073093B]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Emergency rule; extension of effective date and request for comments.

SUMMARY: An emergency interim rule is in effect through August 4, 1993, which establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California. Because conditions warranting the emergency still exist, the Secretary of Commerce (Secretary) extends the emergency rule for 90 days. The emergency rule is intended to prevent overfishing, to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries, and to provide for treaty Indian and non-treaty inside fisheries and spawning escapement.

DATES: Effective from 0001 hours August 5, 1993, through 2400 hours November 2, 1993. Comments will be accepted until August 20, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115–0070; or Gary Matlock, Acting Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140, or Rodney R. McInnis at (310) 980–4030.

SUPPLEMENTARY INFORMATION: Due to concerns regarding the spawning escapement and Indian inriver harvest of Klamath River fall chinook salmon, NMFS disapproved the 1993 salmon seasons recommended by the Pacific Fishery Management Council (Council). Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), an emergency rule was implemented on May 1, 1993 (58 FR 26922, May 6, 1993) to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for the month of May. The emergency rule was amended effective June 1, 1993, through August 4, 1993 (58 FR 31664, June 4, 1993), to establish management measures for the remainder of the season under the assumption that those management measures would be extended for a second 90-day period.

Continuation of the salmon fisheries outlined in the amended emergency rule is necessary to allow the fishery along the coast to proceed and to achieve the objectives for Klamath River fall chinook salmon as agreed by the Department of Commerce and the Department of the Interior. These

objectives, which provide for an increased spawning escapement floor and the expected harvest by the Indian tribes on the Klamath River, and their rationale are described in detail at 58 FR 31664. The emergency rule must be extended for an additional 90 days to implement the management measures for the majority of the 1993 season in order to prevent an inconvenient and premature closure of the fishery. The Council concurs in a 90-day extension. Therefore, the Secretary extends the effectiveness of the amended emergency rule through November 2, 1993.

Comments: NMFS received comments regarding the negative economic impact the Secretary's decision would have on the commercial troll fleet and coastal communities. Other comments expressed concern about the timing and rationale for rejecting the management recommendations produced by the lengthy Council process. NMFS also received letters in support of the Secretary's action.

Response to Comments: The Secretary's decision strikes a balance between the conservation need for additional spawners inriver fishery needs, and the economic impacts on the ocean fishery. Klamath River fall chinook salmon have suffered serious declines in recent years. The revised spawning escapement floor of 38,000 natural spawners combined with improved environmental conditions in 1993 and the Department of the Interior's commitment to provide more water for fish production in the Trinity River, a major tributary of the Klamath River, will substantially improve the probability that Klamath River fall chinook salmon will rebuild to a level that can sustain healthy fisheries. The timing of the Secretary's decision was dependent on the outcome of discussions between the Department of Commerce and the Department of the Interior over unresolved legal issues concerning the nature and magnitude of tribal fishing rights on the Klamath River. Both Departments agreed to seek an orderly resolution of the legal dispute in time for the 1994 management process. NMFS continues to support the Council process, and will rely on the Council to provide recommendations to the Secretary for fishery management actions that are in the long-term interest of conservation of fishery resources, the fishing industry, and the Nation.

The emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order is not possible.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: August 3, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–18818 Filed 8–3–93; 1:46 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 921185–3021; I.D. 080293A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1993 total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t), August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP), prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery by operators of vessels using trawl gear for Pacific ocean perch in the AI was previously closed under § 675.20(a)(8) (58 FR 25952, April 29, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the 1993 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding that closure and is reopening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 3, 1993.

David S. Crestin,

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

[FR Doc. 93–18830 Filed 8–5–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June, of 1993. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 12, No. 2, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2303 or (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 29th day of July 1993.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–18831 Filed 8–5–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–237–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Rolls Royce RB211–524 or General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections, adjustments, and functional checks of the thrust reverser system. This action would add a requirement for installation of a terminating modification on airplanes equipped with Rolls Royce engines, and repetitive operational checks of the gearbox locks and of the air motor brake following accomplishment of the installation. This proposal is prompted by the identification of a modification that ensures that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The actions specified by the proposed AD are intended to prevent possible discrepancies that exist in the current thrust reverser control system, which could result in an inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by October 4, 1993.

ADDRESSES: Submit Comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2684; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–237–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 7, 1991, the FAA issued AD 91–22–02, Amendment 39–8062 (56 FR 51638, October 15, 1991), to require inspections, adjustments, and functional checks of the thrust reverser system on all Boeing Model 767 series airplanes powered by Rolls Royce RB211–524 or General Electric CF6–80C2 series engines. That action was prompted by an ongoing design review, resulting from an accident investigation from which it had been determined that, prior to the accident, the airplane apparently experienced an uncommanded in-flight deployment of a thrust reverser. Deployment of a thrust reverser in flight could result in reduced controllability of the airplane. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

Since the issuance of that AD, Boeing and the FAA have identified a modification for Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The FAA has determined that the accomplishment of this modification will prevent possible discrepancies that exist in the current thrust reverser control system, which could result in an inadvertent deployment of a thrust reverser during flight.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993, that describes procedures for installation of a second locking gearbox system on the left- and right-hand engine thrust reversers on Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines to minimize the possibility of an uncommanded in-flight deployment of the thrust reversers. This modification involves revising certain wiring and installing new wiring on the engine fan case, strut, wing leading edge, and body to the electrical equipment center. The FAA has determined that accomplishing this modification in accordance with the service bulletin would positively address the identified unsafe condition with regard to those airplanes equipped with Rolls Royce RB211–524 series engines.

The FAA has also reviewed and approved Boeing Service Bulletin 767–78–0047, Revision 2, dated January 21, 1993 (for Model 767 series airplanes equipped with General Electric CF6–80C2 series engines), that adds airplanes to the service bulletin effectivity. In addition, the FAA has reviewed and approved Boeing Service Bulletin 767–78–0048, Revision 1, dated March 26, 1992, that revises the original issue of the service bulletin by adding procedures for an insulation test and a troubleshooting test for Model 767 airplanes equipped with Rolls Royce RB211–524 series engines. The FAA has included these latest revisions of the service bulletins in this proposal as the appropriate service information sources.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–22–02 to continue to require inspections, adjustments, and functional checks of the thrust reverser system. Those actions would be required to be accomplished in accordance with the latest revisions of the service bulletins (described previously).

This AD also would add a requirement for installation of a second locking gearbox system on the thrust reversers on Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines, which, when accomplished, would terminate the requirements of the existing AD for those airplanes. The installation would be required to be accomplished in accordance with the modification service bulletin described previously.

This action also would require repetitive operational checks of the numbers 2 and 3 gearbox locks and the air motor brake following accomplishment of the installation. These components are the locking devices that prevent inadvertent in-flight deployment of the thrust reverser. Operational checks of these components will detect latent failures of the components and are necessary in order to ensure the integrity of the thrust reverser system. These operational checks would be required to be accomplished in accordance with procedures described in the airplane maintenance manual.

There are approximately 155 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $50,820, or $1,210 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Currently, there are no Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 754 work hours to accomplish the proposed modification, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact for installation of the modification would be $41,470 per airplane.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14

CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8062 (56 FR 51638, October 15, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–237–AD. Supersedes AD 91–22–02, Amendment 39–8062.

Applicability: All Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines or General Electric CF6–80C2 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) For airplanes equipped with Rolls Royce RB211–524 series engines: Within 30 days after October 15, 1991 (the effective date of AD 91–22–02, Amendment 39–8062), perform the inspections, adjustments, and functional checks described in Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992. After the effective date of this AD, these actions shall be accomplished only in accordance with Revision 1 of the service bulletin.

(1) Except as provided by paragraph (a)(2) of this AD, repeat all inspections and functional checks in accordance with the service bulletin at intervals not to exceed 3,000 flight hours.

(2) Repeat the functional check of the grounding wire for the thrust reverser Selector Sequence Valve (SSV) in accordance with paragraph III.E. of the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the SSV grounding circuit.

(b) For airplanes equipped with General Electric CF6–80C2 series engines: Within 30 days after October 15, 1991 (the effective date of AD 91–22–02, Amendment 39–8062), perform the inspections, adjustments, and functional checks described in Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993. After the effective date of this AD, these actions shall be accomplished only in accordance with Revision 2 of the service bulletin.

(1) Except as provided by paragraph (b)(2) of this AD, repeat all inspections and functional checks in accordance with the service bulletin at intervals not to exceed 3,000 flight hours.

(2) Repeat the functional check of the grounding wire for the thrust reverser Directional Pilot Valve (DPV) in accordance with the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the DPV grounding circuit.

(c) If any of the inspections and/or functional checks required by paragraph (a) or (b) of this AD cannot be successfully performed, or if those inspections and/or functional checks result in findings that are unacceptable in accordance with Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993; accomplish paragraphs (c)(1) and (c)(2) of this AD. After the effective date of this AD, the actions required by paragraph (c)(2) of this AD shall be accomplished only in accordance with Boeing Service Bulletin 767–78–0048, Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, Revision 2, dated January 21, 1993; as applicable.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 11, dated March 15, 1993. No more than one reverser on any airplane maybe deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993; as applicable. Additionally, the inspections and/ or functional checks required by paragraph (a) or (b) of this AD must be successfully accomplished; once this is accomplished, the thrust reverser must then be reactivated.

(d) For airplanes equipped with Rolls Royce RB211–524 series engines: Within 3 years after the effective date of this AD, install a second locking gearbox system on the left- and right-hand engine thrust reversers, in accordance with Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993. Within 3,000 flight hours after accomplishing this modification, or within 1,000 flight hours after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,000 flight hours; perform operational checks of the number 2 and number 3 gearbox locks and of the air motor brake in accordance with the Airplane Maintenance Manual, Task 78–30–00–715–132–D00; Item 11, "Gearbox Lock and Air Motor Brake Test;" page 537, dated August 10, 1992; page 538, dated November 10, 1992; page 539, dated August 10, 1992; and pages 540 through 543, dated November 10, 1992.

(e) For airplanes equipped with Rolls Royce RB211–524 series engines: Accomplishment of the modifications and periodic operational checks required by paragraph (d) of this AD constitutes terminating action for the inspections, adjustments, and functional checks required by paragraph (a) of this AD.

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

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18808 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–173–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that would have superseded an existing AD to require inspections, adjustments, and functional checks of the engine thrust reverser system and installation of an additional thrust reverser system locking feature. That proposal was prompted by results of a safety review of the thrust reverser system on these airplanes. This action revises the proposed rule by revising the compliance time for accomplishing the modification; adding airplanes to the applicability; and requiring periodic functional tests of the locking feature following its installation. The actions specified by this proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by September 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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.

FOR FURTHER INFORMATION CONTACT: Jeffrey Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 14, 1992 (57 FR 59001). That NPRM would have superseded AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991), to require certain inspections, adjustments, and functional checks of the engine thrust reverser system; modification of the engine thrust reverser directional control valve; and installation of an additional thrust reverser system locking feature (sync lock), which, when accomplished, would terminate the requirements for repetitive inspections and functional checks. That NPRM was prompted by results of a safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further reduce the likelihood of an in-flight thrust reverser deployment is necessary. Deployment of a thrust reverser in flight could result in reduced controllability of the airplane.

Since the issuance of that NPRM, the FAA has determined that, following installation of the sync lock (either in production or by retrofit), a periodic functional test must be accomplished on all airplanes to ensure the integrity of the sync lock. Indication of failures, resulting in an "unlocked" sync lock, is not provided as part of this proposed installation. In light of this design implementation, the FAA has concluded that a periodic functional test of the sync lock is necessary for all airplanes, as proposed in paragraph (e) of this NPRM. The functional test and correction of any discrepancy found would be required to be accomplished in accordance with procedures defined in the Boeing 757 Maintenance Manual. The FAA may later revise the proposed interval at which this test is to be accomplished, based on sync lock service experience.

The economic impact information, below, has been revised to include the one additional work hour that would be necessary to accomplish each functional test.

In addition, since all Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines would be subject to this requirement, the applicability statement of the proposal has been revised accordingly.

The FAA has reviewed and approved Revision 2 to Boeing Service Bulletin 757–78–0028, dated January 14, 1993. The service bulletin revision divides the thrust reverser sync lock installation into work packages that operators can accomplish in increments of 48 hours or less. The proposed AD includes reference to this revised service bulletin as an additional appropriate source of service information.

The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

The FAA has given due consideration to comments submitted in response to the original NPRM:

One commenter to the NPRM requests that the FAA revise the proposed rule to indicate that approvals of alternative methods of compliance for AD 91–20–09 remain in effect for purposes of compliance with the proposed AD. The commenter does not believe that operators should be required to reapply for approved deviations to a restated provision in an AD simply because the AD number has been changed.

The FAA concurs with the commenter's request. The FAA did not intend to restrict previously approved alternative methods of compliance for AD 91–20–09 from remaining effective under a superseding AD. A note is included in paragraph (g) of this supplemental NPRM to state that approvals of alternative methods of compliance for AD 91–20–09 remain effective for the proposed requirements of paragraphs (a) through (c) of this AD.

This commenter also requests that the compliance time for accomplishing the modification required by proposed paragraph (d) be revised to remove the requirement that each operator accomplish the installation on at least 20 percent of the affected fleet in its possession during each one-year period of the proposed 5-year compliance period. The commenter states that adoption of the proposed compliance requirements would cause operators to schedule special times for the accomplishment of this modification at additional expense over that estimated in the cost impact analysis of the AD. Additionally, the commenter states that the proposed compliance period would discourage operators from beginning the modifications before the final rule becomes effective, since credit is given only for installations accomplished within each of the five one-year periods included in the compliance time.

The FAA concurs with the commenter's request. In evaluating the current status of the fleet, the FAA has

determined that operators are accomplishing the modification in a timely manner, even in the absence of a mandated schedule. Therefore, revising the compliance time as requested will not adversely affect safety, and will allow the modification to be performed at a base during regularly schedule maintenance where special equipment and trained maintenance personnel will be available. Paragraph (d) of this supplemental NPRM has been revised accordingly.

Since certain of the changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 211 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 192 airplanes of U.S. registry would be required to accomplish the modification required by this proposed AD, that it would take approximately 624 work hours per airplane to accomplish that proposed modification, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish the proposed modification is estimated to be $6,589,440, or $34,320 per airplane.

In addition, the FAA estimates that 270 airplanes of U.S. registry would be required to accomplish the periodic functional tests required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish each functional test, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish each functional test is estimated to be $14,850, or $55 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,604,290. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[Amended]

2. Section 39.13 is amended by removing amendment 39–8043 (56 FR 46725, September 16, 1991), and by adding the following new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–173–AD. Supersedes AD 91–20–09, Amendment 39–8043.

Applicability: All Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (b) of this AD restate the requirements of AD 91–20–09, Amendment 39–8043, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–20–09 have been accomplished previously, paragraphs (a) and (b) of this AD do not require those actions to be repeated.

Note 2: Paragraph (d) of this AD restates the requirement for repetitive inspections contained in paragraph (d) of AD 91–20–09, Amendment 39–8043. Paragraph (d) of this AD requires that the first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph (d) of AD 91–20–09.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Prior to further flight, correct any discrepancy found in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

(d) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the sync lock in accordance with the "Thrust Reverser Auto Restow and Sync Lock Test" procedure described in Section 78–31–00, pages 507–516, dated June 20, 1992, of the Boeing 757

Maintenance Manual. Prior to further flight, correct any discrepancy found in accordance with procedures described in the Boeing 757 Maintenance Manual.

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

(g) 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 3: Approvals of alternative methods of compliance issued for AD 91–20–09 constitute valid approvals for compliance with the requirements of paragraphs (a) through (c) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–18809 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AWP–5]

Proposed Establishment of Class D Airspace; Gila Bend, Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Gila Bend Air Force (AF) Auxiliary (AUX) Field, Gila Bend, Arizona. The U.S. Air Force operates a control tower at Gila Bend AF AUX Field with an associated airport traffic area. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and eliminate those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at Gila Bend AF AUX Field would lapse. The intended effect of this proposal is to provide adequate Class D airspace to contain instrument flight rules (IFR) operations and continue the existing two-way radio communication requirement at Gila Bend AF AUX Field.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 93–AWP–5, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 2010, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Gila Bend AF AUX Airport, Gila Bend, AZ. The U.S. Air Force operates a control tower at Gila Bend AF AUX Field with an associated airport traffic area (ATA). Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and, for current control zones with operating control towers, replace it with the designation "Class D airspace." Only ATA's already designated to become Class D airspace will continue to exist; Gila Bend AF AUX Field has not been so designated. As a result, the requirement for two-way radio communication with the control tower at Gila Bend AF AUX Field would lapse. The intended effect of this proposal is to provide adequate Class D airspace to contain IFR operations and continue the existing two-way communication requirement at Gila Bend AF AUX Field. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in the document would be published subsequently in the Order.

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

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A Airspace designations and reporting points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

AWP AZ CZ Gila Bend [New]

Gila Bend AF AUX Airport, Gila Bend, AZ
(Lat. 32°53'06" N, long. 112°43'14" W)

That airspace extending upward from the surface up to and including 3,900 feet MSL within a 4.2-mile radius of Gila Bend AF AUX Airport, excluding that airspace within Restricted Area R–2305. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on July 14, 1993.

Harvey R. Riebel,

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

[FR Doc. 93–18848 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–20]

Proposed Alteration of Jet Route J–171; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke a portion of Jet Route J–171 from Hugo, CO, to Kiowa, CO, because the Kiowa, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility is scheduled to be decommissioned after the new Denver International Airport becomes operational. The intended effect of this action is to support the new Denver International Airport airspace realignment.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 93–ANM–20, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

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

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a portion of Jet Route J–171 from Hugo, CO, to the Kiowa, CO, VORTAC because the Kiowa, CO, VORTAC is scheduled to be decommissioned after the new Denver International Airport becomes operational. This action would accommodate the new Denver International Airport airspace realignment. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Subpart A—Class A Airspace.

* * * * *

J-171 [Revised]

From Tobe, CO, to Hugo, CO.

* * * * *

Issued in Washington, DC, on July 20, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–18849 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 63

RIN 0905–AD28

Traineeships

AGENCY: National Institutes of Health, Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue revised regulations concerning research traineeships awards. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to its research mission.

DATES: Comments must be received on or before October 5, 1993.

ADDRESSES: Comments should be sent to Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Migliore, at the address above, or telephone (301) 496–2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 405(b)(1)(C) of the PHS Act authorizes the Secretary, acting through the directors of the national research institutes of NIH, which pursuant to Public Law 102–321 include the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), and the National Institute of Mental Health (NIMH), to conduct and support research training for which fellowship support is not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. Additionally, section 472 of the PHS Act authorizes the award of traineeships in medical library science and related fields, and section 484 authorizes the Director of the National Center for Nursing Research (NCNR) of NIH to provide research training and instruction, and to establish research traineeships and fellowships. Under these authorities, NIH offers research traineeships to qualified individuals. The existing regulations at 42 CFR part 63 covering traineeships, promulgated on December 12, 1956 (21 FR 9868), are obsolete. This proposed rule would revise the existing regulations in their entirety to cover traineeships awarded by NIH pursuant to sections 405(b)(1)(C), 472, and 484 of the PHS Act. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to its research mission. The purpose of this notice is to invite public comment concerning the proposed rule. The following statements are provided as public information.

1. Regulatory Impact Statement

The proposed rule has been reviewed in accordance with the requirements of Executive Order No. 12291. This rule simply establishes the procedures by which traineeships are managed and does not create any anti-competitive, economic, or other effects which would make this a major rule. Therefore, the Secretary has determined that it does not constitute a major rule as specified in that Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

The proposed rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). This rule simply establishes the procedures by which traineeships for individuals are managed and does not effect small entities. Therefore, the Secretary has determined that compliance with the proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

This proposed rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection is § 63.6(b) regarding application materials and the associated burden were previously approved by OMB under OMB Approval Number 0925–0299 (expires October 31, 1993). The title, description, and respondent description of the information collection requirements specified in this proposed rule and reported to OMB are presented below with an estimated annual burden. Organizations and individuals interested in commenting on the information collection requirements are invited to send their comments to: Dr. Charles MacKay, Project Clearance Officer, National Institutes of Health, Building 1, room 328, 9000 Rockville Pike, Bethesda, Maryland 20892, and/or OMB Desk Officer, Office of Information

and Regulatory Affairs, OMB, New Executive Office Building, room 3208, 725 17th St., NW., Washington, DC 20503.

Title: National Institutes of Health Research Traineeships

Description: the information collection will be used by NIH to determine an applicant's eligibility to apply for a traineeship, ensure that an awardee agrees to comply with the terms and conditions of the traineeship, and ensure that an awardee shows good cause for not reimbursing PHS for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason.

Respondent Description: Individuals or households.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting: § 63.6(b)				
Summer Fellowship Applicants	3,000	1	1	3,000
Predoctoral & Postdoctoral Applicants	400	1	1	400
Summer Fellowship References	6,000	1	.33	2,000
Predoctoral & Postdoctoral References	1,200	1	.33	400
Subtotal	10,600	1	.55	[1] (5,800)
§ 63.8(c)	100	1	.25	25
§ 63.9(a)	100	1	.25	25
Total				5,850

[1] This burden is approved under OMB Approval Number 0925–0299 (expired October 31, 1993).

4. Catalog of Federal Domestic Assistance

Catalog of Federal Domestic Assistance program number affected by this proposed rule is: 93.140.

List of Subjects in Part 63

Grant programs—health; Health; Medical research.

Accordingly, it is proposed to revise part 63 of title 42 of the Code of Federal Regulations to read as set forth below.

Dated: March 1, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: April 2, 1993.

Donna E. Shalala,

Secretary.

PART 63—TRAINEESHIPS

Sec.

63.1 To what programs do these regulations apply?
63.2 Definitions.
63.3 What is the purpose of traineeships?
63.4 What are the minimum qualifications for awards?
63.5 How will NIH make awards?
63.6 How to apply.
63.7 What are the benefits of awards?
63.8 What are the terms and conditions of awards?
63.9 How may NIH terminate awards?
63.10 Other HHS policies and regulations that apply.

Authority: 42 U.S.C. 216, 284(b)(1)(C), 286b–3, 287c–1.

§ 63.1 To what programs do these regulations apply?

(a) The regulations in this part apply to intramural research traineeships awarded by each Director of a national research institute of NIH, the Director of the National Library of Medicine (NLM), the Director of the National Center for Nursing Research (NCNR), or designees pursuant to sections 405(b)(1)(C), 472, and 484 of the Public Health Service Act.

(b) The regulations of this part do not apply to research training which is part of the National Research Service Award Program provided under 42 CFR part 66, the Mental Health Traineeship Program provided under 42 CFR part 64a, or residency training of physicians or other health professionals.

§ 63.2 Definitions.

As used in this part:

Act Means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Award means an award of funds under section 405(b)(1)(C), 472, and 484 of the Act, or other sections of the Act which authorize research training or traineeships.

Awardee means an individual awarded a traineeship under sections 405(b)(1)(C), 472, and 484 of the Act, or other sections of the Act which authorize research training or traineeships.

Director means the Director of one of the national research institutes of NIH specified in section 401(b)(1) of the Act, the Director of the National Library of Medicine, the Director of the National Center for Nursing Research, or any official of NIH to whom the authority involved has been delegated.

HHS means the Department of Health and Human Services.

NIH means the National Institutes of Health.

PHS means the Public Health Service.

Traineeship means an award of funds under section 405(b)(1)(C), 472, or 484 of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

§ 63.3 What is the purpose of traineeships?

The purpose of an NIH research traineeship is to provide support for financial subsistence to an individual during a period in which the awardee is acquiring training in:

(a) Basic and/or clinical biomedical or behavioral research relating to human health, including extending healthy life and reducing the burdens of illness, or

(b) Medical library science or related fields pertaining to sciences related to health or the communication of health sciences information.

Traineeships are intended to make available in the United States an increased number of persons having special competence in these research fields through developmental training and practical research experience in the facilities of NIH, with supplemental

training at other qualified institutions (see § 63.8(a)).

§ 63.4 What are the minimum qualifications for awards?

Minimum qualifications for any traineeship shall be established by the Director and shall be uniformly applicable to all applicants in each traineeship program. These minimum qualifications may include requirements as to citizenship, medical standards, academic degrees, professional or other training or experience, and other factors as may be necessary to the fulfillment of the purpose of the traineeship. The Director may, as a matter of general policy or, in individual cases, waive compliance with any minimum qualification so established to the extent that the applicant or applicants have substantially equivalent qualifications or have such special training, experience or opportunity for service as to make an award particularly appropriate, and to the extent the Director finds it is consistent with the fulfillment of the purpose of the traineeship.

§ 63.5 How will NIH make awards?

Subject to the regulations of this part, the Director may award traineeships to those qualified applicants who are best able in that official's judgment to carry out the purpose of the traineeships. These awards may be made for a period of one (1) year or other period, including extensions or renewals, as may be specified.

§ 63.6 How to apply.

(a) Application for a traineeship shall be made in writing as prescribed by the Director.

(b) In addition to other pertinent information, the Director may require each applicant to submit the following information:

(1) Certification of the applicant's citizenship status;

(2) The applicant's educational background and other qualifications and experience, including previous academic and professional degrees, if any; and

(3) The subject area of the proposed training.

(c) By applying, eligible individuals agree to abide by HHS, PHS, and NIH regulations, and the terms and conditions of the traineeship award which may require compliance with policies and procedures that apply to the proper conduct of research, such as research involving human and animal subjects, patient care, hospital and laboratory procedures, handling of confidential information, and outside employment.

§ 63.7 What are the benefits of awards?

(a) Subject to the availability of funds, each individual awarded a traineeship may receive a stipend fixed in an amount determined by the Director.

(b) Additional allowances and benefits may be authorized by and at the discretion of the Director, taking into account the cost of living and other factors such as the requirements of the training program and availability of discretionary funds. Discretionary allowances and benefits may include: Health benefits coverage; dependents' allowance; travel to pre-award interviews, to first duty station, and return to place of origin upon conclusion of the traineeship; tuition and institution fees; and other specific costs as may be necessary to fulfill the purpose of the training program.

§ 63.8 What are the terms and conditions of awards?

All traineeships shall be subject to the following terms and conditions:

(a) Training must be carried out at a facility of the NIH, but may be supplemented by additional training acquired at another institution which is found by the Director to be directly related to the purpose of the traineeship and necessary to its successful completion.

(b) Payments shall be made to the awardee or to the institution for payment to the awardee in accordance with payment schedules as prescribed by the Director for each traineeship program.

(c) The awardee shall reimburse NIH for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason, unless waived for good cause shown by the awardee.

(d) The Director may establish procedures and requirements applicable to traineeship awards, consistent with the regulations in this part, regarding: (1) The proper conduct of research investigations, including research involving human and animal subjects; (2) patient care; (3) hospital and laboratory procedures; (4) handling of confidential information; (5) outside employment; and (6) additional conditions the Director finds necessary to fulfill the purpose of the traineeship.

(e) The awardee shall sign an agreement to comply with the terms and conditions of the traineeship.

§ 63.9 How may NIH terminate awards?

The Director may terminate a traineeship at any time:

(a) Upon written request of the awardee; or

(b) If it is determined that the awardee has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which it was made.

§ 63.10 Other HHS policies and regulations that apply.

Several other policies and regulations apply to awards under this part. These include, but are not necessarily limited to:

45 CFR Part 46—Protection of human subjects.

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 86—Nondiscrimination on the basis of sex in HHS education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules.

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor.

[FR Doc. 93–18689 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

Health Care Financing Administration

42 CFR Parts 435, 436, and 441

[MB–59–P]

RIN 0938–AF92

Medicaid Program; Minimum Physician Qualifications for Certain Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would prohibit payment of Federal matching funds to a State Medicaid program for all physicians' services provided on or after January 1, 1992 to a child under age 21 or a pregnant woman, unless the physician meets specified requirements or is certified by a recognized medical specialty board as qualified to provide physicians' services to a child under age 21 or to a pregnant woman. It would incorporate and interpret provisions of section 4752(e) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508.

The purpose of the legislation and these proposed regulations is to improve

the quality of physicians' services under Medicaid.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 5, 1993.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services. Attention: MB–59–P, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–59–P. 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 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Laura Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Sizelove, (410) 966–4626

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Policy

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Medical assistance, as defined in section 1905 of the Act, includes physicians' services. Federal financial participation (FFP) is available to States for medical assistance payments to physician providers made on behalf of eligible Medicaid recipients.

Prior to the enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101–508, on November 5, 1990, there were no statutory or regulatory requirements concerning the availability of FFP for physicians' services provided to children under age 21 or to pregnant women. Any physician who was a qualified provider under the State plan could furnish covered physicians' services to a Medicaid recipient and the State would be eligible to receive FFP. In an effort to improve the quality of care provided to children under age 21 and pregnant women, section 4752(e) of OBRA 90 imposes specific requirements on physicians who furnish Medicaid services to children under age 21 and pregnant women.

B. Legislation

Section 4752(e) of OBRA 90 added to section 1903(i) of the Act a new paragraph (14) which prohibits FFP for physicians' services provided on or after January 1, 1992 to a child under age 21 or a pregnant woman (or during the 60-day period following the termination of the pregnancy) unless the physician meets at least one of six specific criteria. Section 1903(i)(14)(A) of the Act lists minimum qualifications that must be met by physicians in order for FFP to be available for their services provided to a child under 21 years of age. Section 1903(i)(14)(B) of the Act lists minimum qualifications that must be met by physicians in order for FFP to be available for their services provided to a pregnant woman.

Section 1903(i)(14)(A) of the Act provides that payment to States under the provisions of section 1903 of the Act will not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a child under 21 years of age, unless the physician either—

- Is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics;
- Is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);
- Holds admitting privileges at a hospital participating in a State plan approved under title XIX;
- Is a member of the National Health Service Corps;
- Documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described above for purposes of specialized treatment and admission to a hospital; or
- Has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age.

Section 1903(i)(14)(B) of the Act provides that payment to States under the provisions of section 1903 of the Act will not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician either—

- Is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics;
- Is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);
- Holds admitting privileges at a hospital participating in a State plan approved under title XIX;
- Is a member of the National Health Service Corps;
- Documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described above for purposes of specialized treatment and admission to a hospital; or
- Has been certified by the Secretary as qualified to provide physicians' services to pregnant women.

The House bill (section 4482 of H.R. 5835) listed the first five qualifications that must be met by physicians in order for FFP to be available for their services to children under age 21 and pregnant women. However, the House bill did not include the sixth provision that permits the Secretary to "certify" that a physician who does not meet those first five minimum qualifications, nevertheless, would be qualified to furnish services to children under age 21 and pregnant women. The Senate amendment had no provisions regarding qualifications of physicians. The Conference Committee added the sixth criterion regarding certification by the Secretary (H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 896–897 (1990)).

II. Proposed Changes to the Regulations

We are proposing to add a new § 441.23 to 42 CFR part 441, subpart A, which would list the minimum qualifications that must be met by physicians in order for FFP to be available for their services to children under 21 years of age and to pregnant women on or after January 1, 1992.

We also propose to add a new paragraph (e) to § 435.1002, which would make FFP available, subject to the conditions specified in the new § 441.23, for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women in the States, the District of Columbia,

the Northern Mariana Islands, and American Samoa. We propose to make a corresponding change to § 436.1002, which would apply in Guam, Puerto Rico, and the Virgin Islands.

A. Physician Qualifications—Physicians' Services Provided to Children Under Age 21

Section 441.23(b) of the proposed regulations would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a child under 21 years of age unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics.

(2) The physician is employed by, or affiliated with, a federally-qualified health center, as defined in section 1905(1)(2)(B) of the Act.

Under section 1905(1)(2)(B) of the Act, federally-qualified health center means an entity which is receiving a grant under section 329, 330, or 340 of the Public Health Service Act; is receiving funding from such a grant under a contract with the recipient of the grant, and meets the requirements to receive a grant under those sections of the Public Health Service Act listed above; or, based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant. The entity may also include an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act. With regard to meeting the requirements to receive a grant under the sections of the Public Health Service Act listed above, the Secretary may waive any of those requirements for up to 2 years for good cause shown.

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan.

(4) The physician is a member of the National Health Service Corps.

(5) The physician documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in criterion (1) above for purposes of specialized treatment and admission to a hospital.

Under this provision, we propose to define the term "specialized treatment" to mean care beyond the scope of general medical practice which requires the expanded knowledge, skills, and abilities of a certified pediatrician or family practitioner.

Under § 441.23(b)(5), we propose to provide that a non-certified physician may be qualified if he or she enters into a consultation and referral arrangement with a certified pediatrician or family practitioner. Under this arrangement, the non-certified physician would consult with or refer the patient to the certified pediatrician or family practitioner for purposes of specialized treatment or hospital admission.

We would require the arrangement to be currently in effect, in writing, and provide for consultation with and referral to the certified physician when a Medicaid child is treated or admitted to a hospital.

A suggested form to document an acceptable consultation and referral arrangement could resemble the following: *Consultation and Referral Arrangement between Physician Treating Child under 21 Years of Age and Physician Certified in Family Practice or Pediatrics.*

As a physician specialist certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties, I agree to consult with and accept referrals for diagnosis, evaluation, treatment, or hospital admission from _____, M.D. for children who are under 21 years of age and enrolled in the Medicaid program for whom _____, M.D. provides physician services.

Section 1903(i)(14)(A)(v) of the Act requires that referral and consultation agreements include a physician who is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics as described in section 1903(i)(14)(A)(i) of the Act. Doctors of osteopathy do not meet the board certification criteria required by section 1903(i)(14)(A)(i) of the Act and, therefore, would not meet the criterion for entering into an agreement with a physician who does not meet any of the specific physician qualifications.

(6) The physician is certified by the Secretary as qualified to provide physicians' services to children under age 21.

(7) The physician is a Medicaid-qualified provider or becomes one between January 1, 1992 and December 31, 1994.

This seventh criterion is our proposal to provide deemed certification for a 3-year period, under the Secretarial certification authority under criterion six, to any physician who does not meet any of the first five criteria. We believe that this deeming is necessary to ensure adequate access to physicians' services to children under 21 and pregnant women under Medicaid by allowing a limited time for physicians who do not meet the specified criteria to do so.

We considered alternative ways of certifying that a physician who does not meet any of the five minimum qualifications listed in section 1903(i)(14)(A) of the Act, as added by section 4752(e) of OBRA 90, is otherwise qualified to provide these services.

One consideration was to develop a formal certification process to determine if a physician who does not meet the minimum qualifications is medically qualified to provide these services. We rejected this alternative as too administratively burdensome. The Secretary would have to delegate authority to HFCA to develop certification criteria, establish hearing procedures, and determine if other components of the Department of Health and Human Services, such as the Public Health Service, would need to be involved. Also, the States are generally responsible for licensing physicians, and we do not want to infringe on this authority.

We have determined that an administrative certification that the physician is medically qualified to receive Medicaid payment for certain services would be more feasible than a certification by the Secretary. We would use the Secretary's authority to provide a 3-year grace period from January 1, 1992, the effective date of OBRA 90, through December 31, 1994, for physicians to meet at least one of the first five specified criteria. During this time, any physician who is a qualified Medicaid provider under an approved State Medicaid plan would be deemed certified by the Secretary as qualified to provide physicians' services to children under age 21. This would apply to any physician who is or who becomes a qualified provider during this 3-year period (that is, a physician who was already a qualified provider as of January 1, 1992 and a physician who becomes a qualified provider in March 1993 would both be deemed certified by the Secretary through December 31, 1994).

After December 31, 1994, a physician who is a qualified Medicaid provider would have to meet one of the first five criteria specified in section 1903(i)(14)(A) of the Act or be certified by the Secretary as qualified to provide physicians' services to children under age 21.

Section 441.23(d)(1) of the proposed regulations provides that, for the period beginning January 1, 1992 through December 31, 1994, a physician who is a qualified provider under the State's Medicaid program is considered certified by the Secretary as qualified to provide physicians' services to a child under 21 (or to a pregnant woman as discussed under section II.B of this preamble). The State determines who is a qualified provider and what constitutes a provider agreement. Therefore, any physician who has a provider agreement with the State Medicaid agency and is qualified to receive payment from the State Medicaid agency for providing physicians' services is a qualified provider for these services from January 1, 1992 through December 31, 1994.

Section 441.23(d)(2) provides that effective January 1, 1995, Federal payments to the State for physicians' services to children under 21 and pregnant women will not be made unless the provider meets the minimum qualifications listed under § 441.23(b)(1) through (b)(6) of these proposed regulations for children under 21 (or § 441.23(c)(1) through (c)(6) for pregnant women as discussed under section II.B of this preamble).

(Section II.D. of this preamble discusses our solicitation of public comments on the feasibility of providing blanket Secretarial certification of certain groups of physicians in order to ensure that access to physicians' services is not adversely affected.)

B. Physician Qualifications—Physicians' Services Provided to Pregnant Women

Section 441.23(c) of the proposed regulations would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60-day period following termination of the pregnancy) unless the physician meets certain statutory criteria.

Under this section, physicians' services for pregnant women apply to all physicians' services for pregnant women, not just pregnancy related services. Physicians' services to pregnant women would include physicians' services provided to a presumptively eligible pregnant woman under section 1920 of the Act (even though we do not consider these women to be eligible for regular Medicaid), and to a woman being treated during the 60-day period beginning on the date of termination of the pregnancy. (Note: Section 1903(i)(14)(B), as added by section 4752(e) of OBRA 90, specifies a 60-day postpartum period for payment for physicians' services under this section. This postpartum period is shorter than other statutorily specified postpartum periods, such as sections 1902(e)(5) and (6) of the Act, which end at the end of the month in which the 60th day occurs.) Under section 1920(d)(1)(B) of the Act, the prenatal services furnished to a presumptively eligible pregnant woman are "medical assistance" under the State plan (and eligible for FFP) only if they are furnished by a provider "that is eligible for payments under the State plan." This would be a provider who meets all of the qualifications under section 1903(i)(14)(B) of the Act.

Specifically, § 441.23(c) would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60-day period beginning on the date of termination of the pregnancy) unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics.

(2) The physician is employed by, or affiliated with, a Federally-qualified health center, as defined in section 1905(l)(2)(B) of the Act.

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan.

(4) The physician is a member of the National Health Service Corps.

(5) The physician documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in criterion (1) above for purposes of specialized treatment and admission to a hospital.

(6) The physician is certified by the Secretary as qualified to provide physicians' services to pregnant women.

(7) The physician is a Medicaid-qualified provider or becomes one between January 1, 1992 and December 31, 1994.

The statutory language of the qualifications criteria for physicians who furnish services to children under age 21 is almost identical to the criteria for physicians who furnish services to pregnant women. The exception is the specified field in which the physician must be certified (for example, family practice or pediatrics, for children under age 21; family practice or obstetrics, for pregnant women). Therefore, our previous discussion, under section II.A. of this preamble, regarding the application and interpretation of the second, fifth, and sixth criteria for physicians' services to children under 21 would apply equally to physicians' services to pregnant women, with recognition of the difference in the field of certification and practice. We are not repeating the discussion under this section.

C. Billing Practices

Billing practices and financial arrangements for the formal consultation and referral agreements described in sections 1903(i)(14)(A)(v) and 1903(i)(14)(B)(v) of the Act are not addressed in this proposed rule. Billing practices and financial arrangements would follow the same State policies and procedures that exist for current referral and consultation agreements between physicians. The State determines whether a specific billing practice or financial arrangement complies with State policy and procedures. However, we solicit comments regarding any problems in the area of billing practices and financial arrangements between physicians who enter into referral and consultation agreements under these proposed regulations.

D. Blanket Physician Certification

Several States and interested parties have suggested that certain groups of physicians receive blanket Secretarial certification under the provisions of sections 1903(i)(14)(A)(vi) and 1903(i)(14)(B)(vi) of the Act in order to ensure that access to physicians' services is not adversely affected. We are interested in receiving comments regarding the impact of such a provision on access to physicians' services and the rationale for certifying certain groups of physicians. Categories of physicians that might be recommended for blanket certification include:

- Internists.
- Physicians, regardless of specialty or board-certification status, performing a service not usually related to childhood illness or pregnancy
- Physicians board-eligible in obstetrics or family practice.
- Physician residents and recent medical school graduates.
- Physicians with admitting privileges at any Medicare-participating hospital (to address, for example, any State's practice of selective contracting for Medicaid services).
- Physicians providing services through a coordinated care arrangement with a Medicaid contract.
- Doctors of osteopathy.

- Physicians in underserved areas.
- Emergency room physicians.

In order to give due consideration to providing blanket Secretarial certification for groups of physicians as described above, we are soliciting comments in regard to the rationale for exempting all or any of the above groups from the specific qualifications in sections 1903(i)(14) (A) and (B) of the Act. We also want to be advised of situations in which access to care might be adversely affected by such a proposed regulation. In addition, we would appreciate comments addressing the specific reasons or barriers that prevent certain groups of physicians from meeting any of the criteria specified in sections 1903(i)(14) (A) and (B) of the Act; or, if there are none, the reasons that these physicians do not obtain board certification or admitting privileges at a Medicaid-participating hospital.

We will consider these comments during preparation of the final rule, in determining whether any or all of the above categories of physicians are qualified to provide physicians' services to children under age 21 and to pregnant women. Also, the Secretary may continue to use his authority to certify additional physicians as qualified at a later date.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The majority of physicians who provide services to children and pregnant women should have no difficulty meeting at least one of the criteria specified in the proposed regulations. In fact, it is likely that most providers of these services already meet at least one (and probably more than one) of the criteria listed. Therefore, we believe that the proposed regulations will have a negligible cost impact.

Since this proposed rule would not meet any of these criteria, it is not considered to be a major rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, long term care facilities, and other providers to be small entities.

Based on the provisions of this proposed rule, we have determined, and the Secretary certifies, consistently with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), that this proposed rule would not have a significant economic impact on a substantial number of small entities. In fact, we anticipate that less than 5 percent of the total number of physicians would not meet any of these criteria. Further, we expect that any providers that currently do not meet the requirements of these provisions will have ample time to do so during the 3-year grace period. However, to the extent that some providers may find the requirements of these provisions adverse, we solicit your comments and any available data. Therefore, an initial regulatory flexibility analysis has not been prepared.

Section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. We are not preparing a rural hospital impact analysis since we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Collection of Information Requirements

Section 441.23(b)(5) of this document contains information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These reporting and recordkeeping requirements are not effective until a notice of OMB's approval is published in the **Federal Register**. The information collection requirement concerns an arrangement between a non-certified physician who may be qualified if he or she enters into a consultation and referral arrangement with a certified pediatrician or family practitioner. Since this arrangement must be in writing, it is considered an information collection requirement under the authority of the Paperwork Reduction Act of 1980. The respondents who would provide the information include the non-certified physician and the certified pediatrician or family practitioner. Public reporting burden for this collection of information is estimated to be ten minutes per agreement if the physician chooses to use the sample form contained in this preamble, and one hour per agreement if the physician produces his or her own written agreement.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

B. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as follows:

A. Part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.1002 is amended by revising paragraph (a), adding and reserving paragraphs (c) and (d), and adding a new paragraph (e) to read as follows:

§ 435.1002 FFP for services.

(a) Except for the limitations specified in §§ 435.1007 and 435.1008, and the conditions described in paragraph (e) of this section, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(e) FFP is available in expenditures for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy) only if the conditions specified in § 441.23 of this subchapter are met.

B. Part 436 is amended as set forth below:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.1002 is amended by revising paragraph (a), adding and reserving paragraphs (c) and (d), and adding a new paragraph (e) to read as follows:

§ 436.1002 FFP for services.

(a) Subject to the conditions described in paragraph (e) of this section, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(e) FFP is available in expenditures for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy) only if the conditions specified in § 441.23 of this subchapter are met.

C. Part 441 is amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for Part 441 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.10 is amended by adding paragraph (j) to read as follows:

§ 441.10 Basis.

* * * * *

(j) Section 1903(i)(14) which lists minimum qualifications for physicians in order for FFP to be available for physician services to children under age 21 and pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy).

3. A new § 441.23 is added under subpart A to read as follows:

§ 441.23 Conditions for payment for physicians' services to children under age 21 and pregnant women.

(a) *Definition of "specialized treatment."* As used in this section, the term "specialized treatment" means care beyond the scope of general medical practice which requires the expanded knowledge, skills, and abilities of a certified pediatrician or family practitioner (for children under age 21), or of a certified obstetrician or family practitioner (for pregnant women).

(b) *Payment for physicians' services provided to children under age 21.* FFP under Medicaid is not available for physicians' services provided on or after January 1, 1992 to a child under 21 unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics;

(2) The physician is employed by, or affiliated with a Federally-qualified health center (as defined in section 1905(1)(2)(B) of the Act);

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan;

(4) The physician is a member of the National Health Service Corps;

(5) The physician documents a current, formal, written, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in paragraph (b)(1) of this section for purposes of specialized treatment and admission to a hospital;

(6) The physician is certified by the Secretary as qualified to provide physicians' services to children under age 21; or

(7) For the period of January 1, 1992 through December 31, 1994, a physician who is or becomes a Medicaid qualified provider in accordance with paragraph (d)(1) of this section will be considered certified by the Secretary as qualified to provide physicians' services.

(c) *Payment for physicians' services provided to pregnant women.* (1) For purposes of this section, physicians' services to pregnant women include physicians' services provided to a presumptively eligible pregnant woman under section 1920 of the Act and to a woman during the 60-day period beginning on the date of termination of the pregnancy.

(2) FFP under Medicaid is not available for physicians' services provided on or after January 1, 1992 to a pregnant woman unless the physician meets at least one of the following criteria:

(i) The physician is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics;

(ii) The physician is employed by, or affiliated with a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);

(iii) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan;

(iv) The physician is a member of the National Health Service Corps;

(v) The physician documents a current, formal, written, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in paragraph (c)(2)(i) of this section for purposes of specialized treatment and admission to a hospital; or

(vi) The physician is certified by the Secretary as qualified to provide physician services to pregnant women.

(vii) For the period of January l, 1992 through December 31, 1994, a physician who is or becomes a Medicaid qualified provider in accordance with paragraph (d)(1) of this section will be considered certified by the Secretary as qualified to provide physicians' services.

(d) *Certification by the Secretary.* (1) On or before December 31, 1994, a physician who is determined by the State to be a qualified provider under the State's Medicaid program is considered certified by the Secretary as qualified to provide physicians' services to a child under 21 or to a pregnant woman.

(2) Effective January 1, 1995, FFP is not available for physicians' services:

(i) Furnished to a child unless the physician meets at least one of the qualifications listed under paragraphs (b)(1) through (b)(6) of this section.

(ii) Furnished to a pregnant woman unless the physician meets at least one of the qualifications listed under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 25, 1993.

William Toby,

Acting Deputy Administrator, Health Care Financing, Administration.

Approved: June 16, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–18823 Filed 8–5–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 76

[MM Docket No. 92–264, FCC 93–332]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Further Notice of Proposed Rule Making (Further Notice) segment of the Commission's Report and Order/Further Notice of Proposed Rule Making seeks additional comment on a number of issues relating to implementation of the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). Specifically, the Commission invites further comment on establishing subscriber limits and channel occupancy limits. The Further Notice segment of this decision is adopted to solicit substantive input from various affected industries and from the public regarding specific proposals for the establishment of vertical and horizontal ownership limits as required by the 1992 Cable Act. The summary of the Report and Order portion of the decision may be found elsewhere in this **Federal Register**.

DATES: Comments are due by August 23, 1993, and reply comments are due by September 3, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St. NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice portion of the Commission's Report and Order/Further Notice of Proposed Rule Making in MM Docket No. 92–264, FCC 93–332, adopted June 24, and released July 23, 1993. The complete text of this Report and Order/FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 857–3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rule Making

1. The Commission, in the Further Notice portion of this Report and Order/Further Notice of Proposed Rule Making continues its effort to establish a substantive record on which to base vertical and horizontal ownership limits as required by the 1992 Cable Act. The Notice of Proposed Rule Making and Notice of Inquiry (Notice) initiating this proceeding was published at 58 FR 3523, January 11, 1993. Specifically, the Commission invites further comment on subscriber limits and on channel occupancy limits.

I. Subscriber limits

2. Section 11(c)(2) of the 1992 Cable Act requires the Commission to establish limits on the number of subscribers an entity can reach through cable systems owned by that entity. In establishing the ownership limits mandated by section 11, the 1992 Cable Act directs the Commission to consider the following public interest objectives of the legislation: (A) To ensure that no cable operator or group of cable operators can unfairly impede the flow of video programming from the programmer to the consumer; (B) to ensure that cable operators do not favor affiliated video programmers in determining carriage and do not unreasonably restrict the flow of video programming of unaffiliated video programmers to other video distributors; (C) to take account of the market structure, ownership patterns, and other relationships of the cable industry, including the market power of the local franchise, joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests; (D) to take into account any efficiencies and other benefits that might be gained through increased ownership or control; (E) to ensure that such rules and regulations reflect the dynamic nature of the communications marketplace; (F) to impose limitations that will not prevent cable operators from serving previously unserved rural areas; and (G) to impose limitations that will not impair the development of diverse and high quality programming.

3. Although the record in this proceeding to date has enabled the Commission to form certain tentative conclusions, it is apparent that further comment on a number of matters is necessary before appropriate subscriber limits can be established. In brief, the Commission proposes to adopt a national subscriber limit of 25% of homes passed and to attribute cable system ownership based on the same criteria that is used in the broadcast context. However, the Commission continues to seek comment on establishing subscriber limits in the range of 0% to 35% of homes passed nationwide. In addition, the Commission proposes to permit ownership of additional cable systems, beyond the 25% limit, if such systems are minority controlled.

Applicable Market

4. The Notice solicited comment on whether regional or national subscriber limits, or both, are necessary to implement the objectives of the 1992 Cable Act. The Commission now proposes to adopt exclusively national subscriber limits. Commenters are asked to indicate whether the proposed national subscriber limits would suffice to implement the objectives of the 1992 Cable Act. In addition, commenters should consider whether the benefits of regional concentration outweigh the possible anti-competitive harm that such concentration may have on the local advertising and programming marketplace. Finally, the Commission asks whether other multichannel video distributors will be available to serve unserved subscribers in all communities if regional limits are imposed.

Measurement and Percentage Limitation

5. In adopting horizontal ownership limits the Commission wishes to balance Congress' concerns regarding the ability of the largest multiple system operators (MSOs) to preclude the launch of new programming services with the benefits to consumers that result from some degree of horizontal concentration. Consequently, the Commission proposes to adopt a horizontal ownership limit prohibiting MSOs from owning cable systems that in the aggregate reach more than 25% of all cable homes passed nationwide. Nonetheless, before adopting this

specific limit, the Commission wants to be certain that we have fully considered all the marketplace implications of such a limit. Therefore, further comment is invited on establishing subscriber limits in a range of 20%–35%.

6. Commenters favoring limits below 25% are asked to indicate how such limits can be squared with the Senate Report's indication that divestiture of existing systems was not intended. In addition, these commenters are asked to discuss the effect that such divestiture would have on service to subscribers, programming carriage agreements, and on future MSO investment in new programming and technology. Conversely, commenters arguing for a limit above 25% are asked to discuss the effect that such limits will have on the ability of new programming services to obtain MSO carriage and to indicate the competitive rationale for a higher limit, given the lack of competition faced by most cable operators locally and in the program acquisition market.

7. We also ask commenters to address the effect of the prohibitions on anti-competitive practices established under section 12 and 19 of the 1992 Act on the appropriate level for subscriber limits.

8. The Commission further proposed to allow ownership of additional cable systems, beyond the limit ultimately adopted, provided such systems are minority-controlled. Commenters are asked to indicate whether allowing such increased ownership is desirable to encourage minority ownership of cable systems as a means of encouraging diversity of programming. Commenters are also asked to indicate the appropriate amount of such increased ownership.

9. As indicated in the Notice, the Commission believes it appropriate to measure subscriber limits as share of homes passed rather than as a share of cable subscribers. The Commission prefers a homes passed standard because it more accurately measures a cable operator's potential reach, by encompassing all television households for which a particular cable operator has the ability to provide service. Comments are solicited at to whether this measure is reasonable and appropriate to our objectives.

10. Also, as referenced in the Notice, the Commission proposes to calculate compliance with the national subscriber limits by subtracting the number of homes passed by cable systems in areas where "effective competition"—as defined under the 1992 Cable Act—is established. The Commission questions, however, whether to include for this purpose the definition of effective competition which applies to cable systems subscribed to by fewer than 30% of the households in the franchise area. Commenters are requested to address whether this definition of effective competition is relevant to the competitive concerns which underlie the establishment of subscriber limits. In addition, some commenters, in response to the Notice, advocate more lenient approaches, proposing that the Commission eliminate subscriber limits in communities where cable operators face competition from another multichannel video program provider. The Commission solicits comment as to why a more lenient definition of effective competition would be appropriate for purposes of subscriber limits than for purposes of rate regulation since both provisions are concerned with establishing the threshold level of competition at which cable operators will be deterred from engaging in anti-competitive practices.

Horizontal Attribution Standard

11. The Commission proposes to adopt horizontal attribution criteria similar to the broadcast attribution criteria contained in § 73.3555 of the Commission's rules. Generally, under the broadcast attribution criteria, all non-voting stock interests (including most "preferred" stock classes) are generally not attributable. All voting stock interests of 5% or more are generally considered attributable. There are several exceptions to the presumption of attribution created by this 5% benchmark. Most notably there is a single majority shareholder exception, which provides that minority interests will not be attributed where there is a single 51% shareholder. In addition, the interests of "insulated" limited partners are not attributed. The Commission requests further comment on whether all these criteria are appropriate and applicable in the cable context. Commenters are also asked to evaluate the relevance of any of the other provisions or exceptions contained in § 73.3555 to this proceeding.

12. Several commenters advocate a stricter approach, such as the video dialtone attribution standard, which attributes 5% voting non-voting stock interests without exception. The Commission concludes that such an approach is unwarranted in this context. In addition, several cable interests advocate that the attribution standard should focus exclusively on control, since in the absence of control, an operator does not have the ability to direct a system's programming choices. The Commission's attribution rules have long recognized that parties that have less than a majority equity interest in a media property can influence management and programming decisions. The Commission sees no reason at this time to diverge from this longstanding principal. Commenters are encouraged to discuss these conclusions.

Jurisdiction and Enforcement

13. The Further Notice proposes that the Commission enforce the suggested subscriber limit. The Commission believes that in enforcing the subscriber limits it may be unnecessary to institute a formal certification process, whereby all cable operators must verify upon transfer or assignment of a cable system that they are in compliance with our subscriber limits. However, additional comment is requested on whether such certification should be required for cable operators currently reaching 20% or more of homes passed. Alternatively, it may be possible for the Commission to adequately monitor and enforce subscriber limits through the use of readily obtainable public information regarding cable system ownership. Commenters favoring such an approach should indicate whether the necessary information regarding cable system ownership and the share of homes passed by the largest MSOs is publically available and the appropriate source that should be used to obtain such information on a regular basis. In addition, the Further Notice finds that the Commission, and not the local franchise authorities, is the appropriate entity to consider any complaints asserting that a particular MSO is in violation of the subscriber limits. The Commission seeks comment on these proposals.

14. Cable commenters have also requested that the Commission waive or exempt MSOs from the subscriber limits in instances of *de minimis* violations or when an MSO is seeking to expand service into an otherwise unserved rural area. The Commission agrees that waivers may be appropriate in these situations and proposes to consider such waiver requests on a case-by-case basis. Commenters are invited on these conclusions and on whether waivers may be appropriate in other circumstances.

15. As proposed in the Notice, the Commission plans to review the subscriber limits every five years to determine whether such limits are reasonable under the prevailing market conditions. The Commission solicits further comment on this proposal and asks commenters to indicate whether review every five years will be adequate to ensure that the regulations are

responsive to the dynamic nature of the cable industry.

II. Channel Occupancy Limits

16. Section 11(c)(2)(B) of he 1992 Cable Act requires the Commission to establish reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an ownership interest ("channel occupancy limits"). By requiring the adoption of channel occupancy limits, Congress sought to reduce the incentive and ability of cable operators and video programmers to engage in anti-competitive practices. In addition, the Senate Report expressed concern that vertical integration limits diversity of cable programming and reduces the number of voices available to the public. In this respect, the channel occupancy limits were also intended to increase the diversity of sources of cable programming.

17. After considering the record submitted in response to the Notice, the Commission continues to have questions and concerns regarding the appropriate level at which to establish channel occupancy limits and the proper application of such limits to specific types of programming. While a review of the record and the Commission's analysis of the market structure has enabled the Commission to reach certain tentative conclusions, additional information regarding how such proposals will affect continued MSO investment in new programming services is requested.

18. Briefly, the Commission proposes to adopt a 40% limit on the number of channels that can be occupied on a cable system by programming in which the particular cable operator has an attributable interest. Vertical ownership attribution for this purpose would be defined by reference to the broadcast attribution criteria. In addition, the Commission proposes to allow carriage of additional vertically integrated video programmers provided such video programmers are minority-controlled or are targeted to a minority audience. The Commission plans to count all activated channels in calculating system capacity and all channels occupied by affiliated programming services would be counted toward the 40% limit. However, the Commission proposes to exempt local and regional programming networks from such limits.

19. The Commission further proposes to grandfather carriage of all vertically integrated programming services that existed as of the effective date of the 1992 Cable Act, which exceed the channel occupancy limits we ultimately adopt. The Commission also proposes to eliminate channel occupancy limits in any community where effective competition is established. In addition, the Commission plan to adopt a maximum channel capacity beyond which the channel occupancy limits will no longer apply.

Application of Channel Occupancy Limits

20. As observed in the Notice, the language contained in section 11(c)(2)(B) of the 1992 Cable Act is unclear regarding whether the channel occupancy limits were meant to apply only to carriage of video programmers affiliated with the particular cable operator or to carriage of any vertically integrated cable programmer on any cable system. Given the uncertainty surrounding the application of channel occupancy limits, the Commission proposes to apply such limits only to video programmers that are vertically integrated with the particular cable operator.

21. Only Tele-Communications, Inc. (TCI) an International Family Entertainment (IFE) offer alternative approaches to channel occupancy limits. Comment is invited on TCI's suggestion that the Commission implement channel occupancy limits by measuring bandwith rather than traditional channels. Commenters are asked to discuss whether TCI's recommended approach would be preferable to a channel based restriction and whether such an approach would be consistent with Congress' direction that the Commission establish limits on "the number of channels" that can be occupied by vertically integrated programming. The Commission also request that commenters indicate whether a bandwith measure would be more adaptive to cable systems employing digital signal compression and other advanced delivery systems. The Commission seeks to adopt regulations that will encourage cable operators to continue to invest in the development of new technologies and innovative program services and invites commenters to indicate whether there are alternative approaches that might further these objectives. The Commission specifically asks commenters to address how the adopted restrictions can be adapted to video on demand systems. Moreover, commenters are asked to indicate what, if any, provisions should be made in the Commission's regulations for the use of cable capacity to provide information and communications services as opposed to video programming services.

22. With respect to IFE's suggestion that no channel occupancy limits be imposed on cable operators unless an unaffiliated or competing video programmer complains that it has been denied access, the Commission finds that such an approach would be consistent with the plain meaning of the statute and so declines to follow this approach. However, comments are solicited on whether an exception should be made allowing systems to carry additional affiliated programming where no unaffiliated or competing programmer seeks carriage and channel capacity would otherwise go.

Calculation of Channel Capacity.

23. The statutory language does not indicate how a cable system's channel capacity should be determined for purposes of applying channel occupancy limits. However, the Senate Report provides a hypothetical calculation in which the cable system's broadcast, PEG and leased access channels are subtracted from the overall system capacity before the channel occupancy limit is applied. Nevertheless, the Commission believes that all activated channels (including those used for non-video services) should be taken into account in calculating system capacity for purposes of applying channel occupancy limits. The Commission notes that cable operators are obligated by the 1992 Cable Act to carry local broadcast and noncommercial educational channels, and are required to reserve channel capacity for lease to unaffiliated programmers. Consequently, it would be unreasonable to use such channels to reduce the base of channels available for carriage of vertically integrated programming. The Commission asks commenters to indicate whether this approach is appropriate and consistent with the objectives of the channel occupancy limits.

Vertical Ownership Attribution Standard

24. The plain language of section 11(c)(2) of the 1992 Cable Act does not indicate the appropriate criteria for determining vertical ownership attribution. The Senate Report, however, suggests that in determining what is an attributable interest, the Committee intended that the Commission use the attribution rules set forth § 73.3555 (Notes) of the Commission's Rules or such other criteria as the Commission deems appropriate. The Commission proposes to apply the broadcast attribution criteria for purposes of applying the channel occupancy limits. In so doing, the Commission dismisses

a number of alternative attribution criteria suggested by commenters.

25. In the context of establishing limits on vertical integration in the cable industry, the Commission is concerned with identifying interests in cable programming services which are sufficient to afford influence or control over programming decisions. The Commission also seeks to identify interests that might potentially provide cable operators with an incentive to favor an affiliated programming service over an unaffiliated or competing programming service. However, these concerns must be balanced with the objective of preserving the benefits and efficiencies of vertical integration and encouraging continued MSO investment in new cable programming services. The Commission tentatively concludes that the broadcast attribution criteria are strict enough to identify all interests that afford the potential to exert influence or control over management or programming decisions, yet flexible enough to permit continued MSO investment in new programming services. Comments are sought as to whether there are any modifications or additional exceptions that should be made to the Commission's attribution criteria to better adapt them for this purpose.

Percentage Limitation

26. The Commission tentatively proposes to adopt a 40% limitation on the number of channels that can be occupied by vertically integrated programming. The Commission notes however, that the appropriate percentage limitation for channel occupancy limits is dependent upon the attribution standard we ultimately adopt to define vertical integration, and on other issues regarding the application of the channel occupancy limits to particular types of programming. The Commission also proposes to allow carriage of additional vertically integrated programming services, beyond the 40% limit, if such services are minority-controlled or are targeted to a minority audience. The Commission asks commenters to discuss whether allowing such expanded carriage of minority-controlled or minority oriented programming services will encourage additional minority ownership and participation in the development of cable programming. Commenters are also requested to indicate whether the definition of "qualified minority programming source" provided in the leased access provisions of the Communications Act would be appropriate for this purpose. (47 U.S.C. 532(i)(2) defines "qualified minority programming source" as a programming source "which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50% minority-owned.")

27. Comment is further solicited on whether the proposed 40% channel occupancy limit is reasonable, given the structure of the marketplace and the other carriage obligations already imposed on cable operators. Commenters are asked to submit whether a 40% limit will adversely affect continued MSO investment in the development of new and innovative programming services. The Commission also asks commenters to indicate how carriage of vertically integrated programming services will be affected by the establishment of a 40% limit. Finally, the Commission seeks comment on whether channel occupancy limits should vary depending on system capacity as is the case with must-carry, leased access, and noncommercial educational carriage requirements.

Treatment of Pay Channels, Multiplexed Channels and Local and Regional Networks

28. The Commission proposes to count all vertically integrated pay-per-view and pay-per-channel services against a system's channel occupancy limits. The Commission disagrees with commenters who argue that multiplexed channels should not be counted towards the channel occupancy limits because they provide subscribers with time diversity or who argue that the Commission should assume that cable operators engage in multiplexing only when they are already carrying a full array of programming. The Commission proposes, however, to exempt local and regional networks from the channel occupancy limits in order to encourage the development of local cable programming. Commenters are requested to address these tentative conclusions and to suggest an appropriate definition for local and regional programming services that should qualify for this exemption.

29. In addition, the Commission is not persuaded by commenters arguments in support of an exemption for new programming services from channel occupancy caps for a period of five years. The Commission believes that if the channel occupancy limit is set at the appropriate level, such an exception for new programming services should be unnecessary. The Commission seeks further comment on whether such an exception is necessary given the proposed 40% channel occupancy limit. Commenters are also asked to indicate whether, alternatively, the Commission should grant waivers to permit carriage of new programming services in appropriate circumstances. Commenters favoring such a waiver provision should suggest the criteria that would be appropriate in connection with such waiver requests.

Effect of Fiber Optic Cable and Digital Signal Compression

30. The Commission continues to support the proposal in the Notice to establish a channel capacity threshold beyond which the channel occupancy limits would not apply. As previously indicated, the expanded channel capacity that will result from fiber optic cable and digital compression technology will most likely eliminate the need for such limits to encourage cable operators to carry unaffiliated or competing programming services. Nevertheless, the Commission tentatively concludes that it is premature to establish such a ceiling at this time.

31. Fiber optics and digital signal compression are still in the experimental phases and are presently being tested in only a few markets. Given the various potential applications of such technologies to provide communications, information and other non-video services, the Commission is unsure what effect such developments will have on the ability of unaffiliated video programers to obtain access to vertically integrated systems. Accordingly, the Commission proposes to consider the adoption of an appropriate channel occupancy ceiling at a late date when there has been an opportunity to study the effects of fiber optic cable and digital signal compression on the carriage of video programming. Alternatively, the Commission asks commenters to indicate whether there is an identifiable channel capacity threshold associated with the next generation of cable technology which would provide an appropriate level beyond which channel occupancy limits should no longer apply. The Commission also seeks comment on whether to review channel occupancy limits every five years making such adjustments as are appropriate at that time.

Effective Competition

32. The Commission proposes to eliminate channel occupancy limits in any community where effective competition, as defined under section 3 of the 1992 Cable Act, is established. The Commission asks commenters to address this proposal and to indicate

whether channel occupancy limits should be automatically phased out where effective competition is established or whether cable operators should be required to obtain a Commission waiver. Commenters are also asked to indicate whether the statutory definition of "effective competition" applicable to rate regulation should also be used for this purpose or whether another standard of effective competition would be more appropriate. Specifically, the Commission questions whether to include for this purpose the definition of effective competition which applies to cable systems subscribed to by fewer than 30% of the households in the franchise area. Commenters are requested to address whether this definition of effective competition is relevant to the competitive concerns which underlie the establishment of channel occupancy limits.

Grandfathering Carriage of Vertically Integrated Programs

33. The Commission concludes that the public interest would not be served by requiring cable operators to delete vertically integrated programming services in order to comply with the channel occupancy caps. Accordingly, the Commission proposes to grandfather all vertically integrated programming services that were carried as of December 4, 1992 (the effective date of the 1992 Cable Act), which exceed the channel occupancy limits ultimately adopted. Once additional capacity becomes available on a grandfathered system, however, the Commission believes that such system should be prohibited from expanding its carriage of vertically integrated programming services until such system is in full compliance with the channel occupancy limits. Commenters are invited to address our rationale for proposing such grandfathering.

Enforcement

34. While the Notice proposed to rely primarily on local franchise authorities to monitor compliance with the channel occupancy limits, the record in this proceeding has raised questions as to whether local authorities have either the resources or the expertise to effectively monitor compliance with the Commission's channel occupancy limits. For this reason the Commission proposed to retain responsibility for monitoring and enforcing compliance with the channel occupancy limits. Commenters are asked to suggest how the Commission can most effectively enforce such limits. The Commission tentatively rejects the proposal of some commenters that channel occupancy limits be enforced on a compliance only basis. Such complaint based enforcement would only ensure that anti-competitive practices are prevented. However, Congress also intended such limits to ensure that a diversity of voices is available to cable subscribers. This objective can only be accomplished by ensuring that all cable operators are in compliance with the carriage limits on vertically integrated programming.

Administrative Matters

Ex Parte. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.203 and 1.206(a).

Comments. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 23, 1993, and reply comments on or before September 3, 1993.

Initial Regulatory Flexibility Analysis

35. Reason for the Action: The purpose of this Further Notice is to establish rules and regulations in accordance with the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of horizontal and vertical ownership limits.

36. Objective of this Action: The 1992 Act and the subsequent actions to implement it are intended to encourage competition in the cable industry and prevent the exercise of undue market power by horizontally or vertically integrated cable systems. This action is meant to assist the Commission in adopting reasonable subscriber limits and channel occupancy limits required by the 1992 Cable Act.

37. Legal Basis: Authority for the actions proposed in this Notice may be found in sections 4, 303, 613 and 617 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 533.

38. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule: This Further Notice proposes to adopt new reporting requirements appliance to cable systems, in order to ensure compliance with the proposed rules.

39. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

40. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing cable systems of all sizes may be affected by the proposals contained in this Further Notice. In addition, an unknown number of video programming sources may be affected.

41. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The purpose of this Further Notice is to seek comment on issues including alternatives that would minimize the impact on small entities.

Ordering Clauses

42. Accordingly, *it is ordered*, That pursuant to the authority contained sections 2(a), 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. 102–385, MM Docket No. 92–264 will remain open until such time as the remaining issues relating to section 11 of the 1992 Cable Act are resolved.

List of Subjects

47 CFR Part 21

Cable television/multipoint distribution services cross ownership, Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–18651 Filed 8–5–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

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

ACTION

Agency Information Collection Activities

AGENCY: ACTION, the Federal Domestic Volunteer Agency.

ACTION: Information collection submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by September 7, 1993. Send comments to both:

ADDRESSES:

Willard L. Heing, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525.

Steve Semenuk, Desk officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title of Forms: Project Progress Reports (PPRs), *ACTION Forms Nos.:*
A–1020 (Older American Volunteer Programs);
A–1035 (Special Volunteer Programs);
A–1432 (Student Community Service Program);
A–1433 (Volunteers in Service to America)

Need and Use: Need: To assure that projects fulfill legislated purpose to monitor progress. Use: To provide standard performance reports by which progress is measured and determine need for technical assistance.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Respondent's Obligation to Reply: Required to retain benefits.

Description of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: A–1020, Semi-Annually (except when required quarterly for projects (1) during first year of operation; (2) with a new project director in his/her first year, and (3) where the Project Manager indicates special oversight is required; A–1035, Quarterly; A–1432 and A–1433, quarterly first year and semiannually in subsequent years.

Estimated Number of Annual Responses: 5,308

Estimated Average Burden Hours per Response: 1.5

Estimated Annual Reporting or Disclosure Burden:
Reporting only = 3.75 hours per project
Recordkeeping only = 10.83 hours per project
Total burden per project = 14.58 (average)

Regulatory Authority: 42 U.S.C. 4950 et seq.

Dated: July 30, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–18799 Filed 8–5–93; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Allison Draw Watershed, WY; Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Frank S. Dickson, Responsible Federal Official for the projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Wyoming, is hereby providing notification that a record of decision to proceed with the installation of the Allison Draw Watershed project is available. Single copies of this record of decision may be obtained from Frank S. Dickson at the address shown below.

FOR FURTHER INFORMATION CONTACT: Frank S. Dickson, State Conservation, Soil Conservation Service, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials)

Dated: July 30, 1993.

Frank S. Dickson,

State Conservationist.

[FR Doc. 93–18804 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Middlesex-Somerset-Hunterdon, N.J. (Service Area)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-years period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from January 1, 1994 to December 31, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Middlesex-Somerset-Hunterdon, N.J. SMA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of

viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. to assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods.

MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Applicants are notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full
2. A negotiated re-payment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

DATES: The closing date for application is September 10, 1993. Applications must be postmarked on or before September 10, 1993.

ADDRESSES: The mailing address for submission is: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278. Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Inglehart, Regional Director, New York Regional Office at (212) 264–3263.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 30, 1993.

William E. Fuller,

Deputy Regional Director.

[FR Doc. 93–18807 Filed 8–5–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New Hampshire Coastal Management Program, the Chesapeake Bay National Estuarine Research Reserve in Maryland, and the Great Bay (New Hampshire) National Estuarine Research Reserve.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of coastal management programs and estuarine reserves require findings concerning the extent to which a state has adhered to the CZM program or estuarine reserve management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits:

The New Hampshire Coastal Management Program site visit will be September 20–24, 1993. A public meeting will be held Wednesday, September 22, 1993, at 7 p.m., at the Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH.

The Chesapeake Bay National Estuarine Research Reserve in Maryland site visit will be September 20–24, 1993. Public meetings will be held on Tuesday, September 21, 1993, at 7 p.m. at the County Administration Building, Oden Bowie Drive, room 2161, Upper Marlboro, MD and on Thursday, September 23, 1993 at 7 p.m., at the County Council Chambers, Level A, 20 West Courtland Street, Bel Air, MD.

The Great Bay (New Hampshire) National Estuarine Research Reserve site visit will be September 27 to October 1, 1993. A public meeting will be held Wednesday, September 29, 1993, at 7 p.m., at the New Hampshire Fish and Game Department, Region 3 Office, 225 Main Street (Route 155A), Durham, NH.

The States will issue notices of the public meetings in local newspapers at least 45 days prior to the public meetings being held, and will issue other timely notices as appropriate.

Copies of the state's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon written request from OCRM. Written comments from interested parties regarding these programs are encouraged at this time and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, SSMC4—11th Floor, Silver Spring, MD 20910. When the final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, SSMC4—11th Floor, Silver Spring, MD 20910, (301) 713–3090.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 2, 1993.

W. Stanley Wilson,

Assistance Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–18802 Filed 8–5–93; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals

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

ACTION: Modification to below-listed permits: Theater of the Sea, Permit Nos. 69 and 326 (P92 and P92B); Dolphin Research Center, Permit No. 514 (P53B); Dolphins Plus, Inc., Permit Nos. 292 and 577 (P234 and P234A); Hyatt Regency Waikoloa Resort, Permit No. 625 (P407).

ADDRESSES: Documents concerning the above modification, clarification, and permits are available for review by appointment in the Office of Protected Resources and Habitat Programs, NMFS, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, (301) 713–2289.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Special Conditions on Swim-With-The-Dolphin (SWTD) programs that apply to Public Display Permits Nos. 69 and 326 issued to the Theater of the Sea, Islamorada, Florida; Permit No. 514 issued to the Dolphin Research Center, Marathon, Florida; Permit Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, Florida; and Permit No. 625 issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, are modified by deleting Special Condition D.1 and substituting the following:

D.1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until June 30, 1994. The National Marine Fisheries Service (NMFS) may modify, suspend, or revoke this authority before June 30, 1994, if the SWTD programs are found to have an adverse impact on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures, and criteria results in new regulations that disallow such programs, or if the terms of the conditions that follow are not met.

Special condition D.3 is deleted and the numbering of the successive special conditions has been advanced accordingly. The wording of all special conditions with the exception of D.1 has also been clarified.

This modification is effective on August 1, 1993.

Dated: July 30, 1993.
William W. Fox, Jr.,
Director, Office of Protected Resources.
[FR Doc. 93–18805 Filed 8–5–93; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 7, 1993.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Insulation Tape, Electrical
5970–00–816–6056
Nonprofit Agency: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.

Chair, Rotary
7110–00–194–1611
7110–00–281–4469
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

Services

Commissary Shelf Stocking and Custodial, Columbus Air Force Base, Mississippi.
Nonprofit Agency: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Commissary Shelf Stocking and Custodial, Naval Air Station, Meridian, Mississippi.
Nonprofit Agency: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Commissary Shelf Stocking and Custodial, Roosevelt Roads, Puerto Rico.
Nonprofit Agency: Brevard Achievement Center, Inc., Rockledge, Florida.

Commissary Shelf Stocking, Custodial and Warehousing, Tyndall Air Force Base, Florida.
Nonprofit Agency: Lakeview Center, Inc., Pensacola, Florida.

Fabrication of Customized Tool Box Liners, Fleet and Industrial Supply Center, Jacksonville, Florida.
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona.

Food Service Attendant, Oregon Air National Guard, Camp Rilea National Guard Training Site, Building 7028, Warrenton, Oregon.
Nonprofit Agency: Clatsop County Development Training Center Association, Astoria, Oregon.

Janitorial/Custodial Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia.
Nonprofit Agency: Ohio County Council for Retarded Children, Inc., Wheeling, West Virginia.

Management of Bachelor Housing, Naval Station, Pascagoula, Mississippi.
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–18869 Filed 8–5–93; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.185A]

Robert C. Byrd Honors Scholarship Program; Inviting Applications for New Grants for Fiscal Year (FY) 1993

PURPOSE OF PROGRAM: To provide, through grants to States, scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

ELIGIBLE APPLICANTS: The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific (Palau) are eligible to apply for grants under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: 9/7/93.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: 9/22/93.

AVAILABLE FUNDS: $9,469,500.

ESTIMATED RANGE OF AWARDS: $15,000 to $1,126,500.

ESTIMATED AVERAGE SIZE OF AWARDS: $166,132.

ESTIMATED NUMBER OF AWARDS: 57.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 12 months.

BUDGET PERIOD: 12 months.

APPLICABLE REGULATIONS: (a) When republished in revised form, the Robert C. Byrd Honors Scholarship Program regulations in 34 CFR part 654; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60–75.62, 76, 77, 79, 80, 82, 85, and 86.

SUPPLEMENTARY INFORMATION: On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 28538).

It is not the policy of the Department of Education to solicit applications

before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

The comment period for the NPRM ended on June 14, 1993. Six commenters responded to the Secretary's invitation to comment. Many of the comments objected to regulatory provisions based on statutory requirements that the Secretary does not have the authority to change. The Secretary anticipates making one change to the proposed regulations based on public comment. The Secretary expects to add to § 654.5 a definition of the term "cost of attendance" that cross-references the definition of that term in section 472 of the Higher Education Act of 1965, as amended.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes discussed in this notice. If additional changes are made in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.

FOR APPLICATIONS OR INFORMATION CONTACT: Patricia W. Gore, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC. 20202–5251. Telephone: (202)708–8849. 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.

Program Authority: 20 U.S.C. 1070d–31 to 1070d–41.

Dated: July 30, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–18801 Filed 8–5–93; 8:45 am]

BILLING CODE 4000–01–P

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 9, 1993, a.m.–4 p.m. and September 10, 1993, 9 a.m.–noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400A, Washington, DC 20208–7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- NCES Dropout Report
- National Adult Literacy Survey
- Update on the National Assessment of Educational Progress
- Proposals for future ACES activities
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400A, Washington, DC 20208–7575.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–18881 Filed 8–5–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement, Assessment and Statement of Findings for the Post Waterflood CO_2 Miscible Flood in Light Oil Fluvial Dominated Deltaic Reservoir (Marginulina Sand) Project, Orange County, TX, With Texaco Exploration and Production Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: This is a combined Floodplain/Wetlands Notice of Involvement, Assessment and Statement of Findings for the proposed Post Waterflood Carbon Dioxide (CO_2) Miscible Flood in Light Oil Fluvial Dominated Deltaic Reservoir (Marginulina Sand) project prepared consistent with 10 CFR part 1022. Texaco Exploration and Production, Inc. (Texaco), in conjunction with the DOE, proposes to demonstrate the technical and economic feasibility of using a horizontal CO_2 injection well to increase oil production in an existing producing field that has substantial oil and gas facilities and activities located about 8.5 miles east of Beaumont, Texas. Texaco would drill several infill wells, including a horizontal CO_2 injection well, and initiate a CO_2 injection program. All but a small portion of the project is located in both the 100-year floodplain of the Neches River and an associated wetlands area in Port Neches, Texas (see enclosed map). This document describes the effects, alternatives, and mitigative measures designed to avoid or minimize potential harm to or within the affected floodplain/wetlands. No direct or indirect permanent adverse impacts on floodplains or wetlands are expected. While the project is in a high flood hazard area, project implementation would result in no additional potential flood hazard. Additionally, there would be no effect on the survival, quality, and natural and beneficial value of wetlands. This document constitutes the Notice of Involvement for the proposed action and includes the Floodplain/Wetlands Assessment pursuant to 10 CFR 1022.12(c). Due to the urgent nature of the project and in accordance with 1022.18(c), DOE waives the 15 day comment period associated with the Notice as well as the 15 day public review period that follows the publication of the Statement of Findings. This proposed action is categorically excluded from the preparation of an EA or an EIS under the Department of Energy's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021).

FOR FURTHER INFORMATION, INCLUDING A LOCATION MAP, CONTACT: Dr. Arthur M. Hartstein, FE–32, Germantown Headquarters, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–2760, FAX: (301) 903–9482.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: With the exception of a small portion in the western project area, the entire area of the proposed project is located in both a 100-year floodplain of the Neches River and an associated wetlands area. The proposed project would include drilling both a horizontal and vertical CO_2 injection well in an existing field which has substantial existing oil and gas facilities and ongoing activities. These proposed new wells would require dredging new drilling slips. COE and Texas State Parks and Wildlife Service have reviewed all proposed project activities (including dredging), concluded that they are standard field procedure for the area, and approved all project activities under the current COE 404 Permit. They further concluded that all project activities (including dredging) would have no significant additional environmental impact. Impacted vegetation would fully recover within one to two growing seasons. The drilling slip for the first well measuring approximately 560 ft. by 190 ft. by 8 ft. would require removal of approximately 31,000 cubic yards of material. The drilling slip for the second well measuring approximately 380 ft. by 190 ft. by 8 ft., would require removal of approximately 21,000 cubic yards of material. Spoils would be piled directly adjacent to the dredging site. A drilling barge would then be floated to the new well locations via existing access canals and drilling activities would occur. These wells would be analyzed and results would be incorporated into reservoir, production, and injection models. Upon the completion of drilling activities, the drilling barge would be removed. Based on subsequent project performance, Texaco would determine whether additional production or injection wells should be drilled.

Minor site dredging required to prepare a separate slip for a production barge would involve the partial removal of an existing 6 ft. high spoils (dredged material) bank directly adjacent to an access canal (see figures 1 and 2). COE and Texas state officials concluded these activities to also be standard for the area, and that they would have no additional long-term environmental impact. The existing spoils bank currently measures 70 ft. wide by 6 ft. high (measured from mean water level) and runs along the bank of the access canal. The total volume of material to be dredged would be approximately 9000 cubic yards, with the area to be dredged measuring approximately 70 ft. by 235 ft. (see Figure 2). Material would be dredged to a depth of 10 ft. below mean water level. Spoil material would be deposited directly adjacent to both the newly dredged site, and the existing spoils bank. A layer of limestone (a limestone mat) measuring 235 ft. long by 70 ft. wide by 4 ft. thick would then be laid in the excavated hole in the slip bottom to form a mat for the production barge. The total volume of limestone required would be approximately 2500 cubic yards. The top of the limestone mat would be approximately at the same level as the slip bottom. Two production barges would then be placed on the limestone pad directly adjacent to each other. These barges would measure 54 ft. by 125 ft. by 10 ft., and 64 ft. by 90 ft. by 12 ft. respectively. Each production barge would contain a compressor and a CO_2 injection pump. Upon project completion, the barge and facilities would be removed, but the limestone mat would remain, which is standard field procedure for the area. These activities also were reviewed by COE and Texas state officials, were found to be a standard procedure for the area, having no long-term environmental impact, and were approved under the current 404 Permit.

Texaco would also "workover" 12 wells located in both a 100-year floodplain and an associated wetlands area, converting eight to production wells and four to injection wells. Additional wells also may be worked-over, as needed, for routine maintenance. The project would also install other required field operating and safety equipment at existing production facilities.

A 4½ mile CO_2 pipeline would be laid in an existing pipeline corridor from a pre-existing CO_2 pipeline west of the project area to the project site. COE and Texas state officials reviewed all activities associated with pipeline installation, concluded that these activities would have minimal environmental impact, and also approved them under the current Army Corps of Engineers 404 Permit. The pipeline would be installed through approximately 14,000 ft. of open water and approximately 9000 ft. of vegetated wetland. This activity would require excavating a ditch measuring 9000 ft. long by 4 ft. wide by 4 ft. deep, resulting in approximately 9700 cubic yards of spoil material. The spoil would be temporarily piled on either side of the ditch so as not to interfere with water flow. Once the pipeline is in-place, the ditch would be backfilled to the maximum extent practicable with available spoil. Impacted vegetation would fully recover within one to two growing seasons. Upon initiation of injection activities, CO_2 would be purchased and transported from a near-by facility via the new pipeline.

During project development, all possible project alternatives were considered, including utilizing alternate sites (locations) and alternate actions (processes and materials). During project design, the Texas State Parks and Wildlife Service was consulted to determine impact minimization measures. The project was redesigned to include only locations, processes, and materials which would eliminate or mitigate environmental impacts. Examples of the mitigative measures incorporated into this proposed action include:

a. Installing air control devices that would minimize air emissions to levels well below allowable limits;

b. Utilizing a minimum amount of equipment on the site, thus minimizing associated environmental impacts;

c. Utilizing CO_2 that would otherwise be released into the atmosphere, thus reducing area CO_2 emissions;

d. Utilizing any dredged topsoil to reconstruct wetlands; and

e. elevating flood sensitive equipment on platforms at least eight feet above the surrounding terrain, thus minimizing hazards during seasonal high water episodes.

For these reasons, this project design would have the lowest potential for adverse environmental impacts relative to other alternatives. Selecting an alternative project site or alternative actions likely would not result in reduced potential environmental impacts and possibly would reduce overall project performance.

Because of previous floodplain and wetlands damage resulting from intense historic oil and gas production, the no-action alternative would result in little or no environmental benefit relative to project implementation. Thus, not implementing the project would have no effect on either lowering environmental impacts relative to project implementation, or in helping to restore area floodplains and/or wetlands to pre-activity conditions.

The entire project area has been classified as being within the 100-year floodplain area as determined by Flood Insurance Rate Maps (FIRMs) and within a wetlands area as determined by analysis of U.S. Geological Survey Topographical Maps and from discussions with Texas state wetland authorities. The proposed action would conform with applicable state and local floodplain protection standards.

Issued in Washington, DC, on August 2, 1993.

Arthur M. Hartstein,

Deputy Director, Office of Oil and Gas Processing.

[FR Doc. 93–18857 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–P

Floodplain/Wetlands Involvement, Assessment and Notice of Statement of Findings for the West Hackberry Tertiary Project, Cameron Parish, Louisiana With Amoco Production Co.

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: This is a combined Floodplain/Wetlands Notice of Involvement, Assessment and Statement of Findings for the proposed West Hackberry Tertiary Project prepared consistent with 10 CFR part 1022. Amoco Production Company (Amoco), in conjunction with DOE, proposes to demonstrate the technical and economic feasibility of using air to displace a water invaded oil column to promote gravity drainage and thus increase oil production in an existing producing field with substantial oil and gas facilities and activities located in northern Cameron Parish, Louisiana, approximately 2 miles west of the Strategic Petroleum Reserve's West Hackberry facility. Additional oil recovery would be expected in response to an in-situ combustion front, which will occur within the reservoir and serve to increase oil mobility. The Amoco project would require no major field modifications to surface facilities. The entire project area is located within both a 100-year floodplain and an associated wetlands area of a coastal zone area in Lake Charles, Louisiana. This document describes the effects, alternatives, and mitigative measures designed to avoid or minimize potential harm to or within the affected floodplain/wetlands. No direct or indirect permanent adverse impacts on floodplains or wetlands are expected. While the entire project is in a high flood hazard area, project implementation would result in no additional potential flood hazard. Additionally, there would be no effect on the survival, quality, and natural and beneficial value of wetlands.

This document constitutes the Notice of Involvement for the purposed action and includes the Floodplain/Wetlands Assessment pursuant to 10 CFR 1022.12(c). Due to the urgent nature of this project and in accordance with § 1022.18(c), DOE waives the 15-day comment period associated with the Notice of Involvement as well as the 15-day public review period that follows the publication of the Statement of Findings. This proposed action is categorically excluded from the preparation of an EA or an EIS under the Department of Energy's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021).

FOR FURTHER INFORMATION, INCLUDING A LOCATION MAP, CONTACT: Dr. Arthur M. Hartstein, FE–32, Germantown Headquarters, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903–2760, FAX: (301) 903–9482.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director; Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The entire area of the proposed project is located in both a 100-year floodplain and an associated wetlands of a coastal zone area. This proposed project that would not require major field modifications to surface facilities has received COE approval under General Permit NOD–22, which is issued when planned activities are ongoing in the area have been proved to have minimal impact on the environment.

Activities associated with this project would include floating a concrete production barge, measuring 30 ft. by 120 ft., to an existing drilling slip at the project site via existing access canals. Two compressors would be located on the barge. To prepare the site for the barge, bucket dredging, allowed under the existing COE permits because of the minimal associated environmental impact, would remove an average of 3 ft. of material from the irregular slip bottom, or approximately 4,000 cubic yards of dredged material (spoil). All spoil would be placed on an existing spoil bank directly adjacent to the site. A layer of shells (shell pad) measuring 50 ft. wide by 140 ft. long by 5 ft. thick would then be laid in the excavated hole in the slip bottom, which would require approximately 1,300 cubic yards of shell material to be barged to the project site via existing access canals. The production barge would be placed on the shell pad in water approximately 5 to 6 ft. deep. The top of the shell pad would be at approximately the same level as the slip bottom. The only environmental impact associated with this activity would be a minor short-term impact on a small number of indigenous flora and fauna due to the removal of marsh bottom material. Installation of the production barge would be tied to the timing of producing well workovers which would be dictated by the advance of the flood front. Upon completion of the project, the barge and facilities would be removed, but the shell pad would remain, which is standard procedure in the area. Any associated long-term environmental impacts would be expected to be minimal since the top of the shell pad is deeper than the surrounding marsh bottom and the slip would eventually be covered by marsh sediment.

New flowlines would be laid along existing flowline corridors, thus minimizing potential associated environmental impacts. The installation of these flowlines has been approved under the U.S. Army Corps of Engineers (COE) General Permit NOD–22 because their installation has been found to have minimal environmental impact by the COE. These flowlines would either be laid on the ground; laid on pre-existing platform; be buried; laid on an existing pipe rack; or laid on a new pipe rack, which would be installed when flowlines must be laid over open water. A flowline would also be laid on a new above the water pipe bridge directly adjacent to an existing foot bridge. Also, a separate-test-and-boost (STAB) facility would be installed at existing facilities. A natural gas liquids recovery unit may also be required and would be installed at existing facilities. After produced fluids are separated and tested, they would be piped via an existing pipeline to Amoco's central production facility for treatment. Undesired produced gas would be either sold or injected into low pressure oil reservoirs.

"Workovers" would begin by converting two producing wells to injection wells. Two additional producing wells may also be converted to injector wells based on overall project need. Typical workover procedures include: Cleaning out the wellbore; perforating the full prospective injection interval; and completing the well with new packers, tubing, and wellhead. Amoco would recondition or recomplete 10 wells to serve as producing wells and/or monitoring wells. Air would be injected at a total rate of 4 million standard cubic feet per day (MMSCF\D). Oil recovery would be expected in response to an in-situ combustion front, which would occur within the reservoir and serve to increase oil mobility. Once formation breakthrough occurs, a separate gas lift compressor would be required for the

gas lift system and would be located on the production barge. Produced gas would either be sold or injected into low pressure reservoirs. To inject the produced gas, a booster compressor may be required, which would also be located on the production barge. Pulse neutron logs, bottom hole pressure surveys, temperature surveys, and spinner surveys may be run in both production and monitor wells to assess project effectiveness. Produced oil and gas samples would be periodically analyzed for composition and physical properties. A grant would also be provided to Louisiana State University to study various aspects of the project.

During project development, Amoco considered all possible project alternatives, including utilizing alternate sites (locations) and alternate actions (processes and materials). The project was redesigned to include only locations, processes, and materials which either eliminate or mitigate potential environmental impacts. Examples of these mitigative measures incorporated into this proposed action include:

a. Conducting all required well activities through existing wellbores, thus eliminating potential environmental risk associated with drilling new wells;

b. Locating equipment and facilities at field sites which have been used as a production facility in the past, thus eliminating the need for additional land usage;

c. Conducting only minimal dredging and only in existing canals and waterways, thus minimizing dredging impacts;

d. Transporting all produced fluids through existing flowlines (when existing flowlines are useable) for treatment at an existing central production facility, and injecting all produced water into currently utilized salt water disposal wells, thus eliminating impacts associated with the need for additional disposal equipment and facilities;

e. Disposing of all produced gas by either selling it or injecting it into low pressure oil reservoirs, thus eliminating impacts associated with gas flaring; and

f. Locating any new flowlines (only if none are present or useable) in existing flowline corridors (where flowlines are already in place) whenever possible, and back-filling trenches when flowline trench excavation is required, thus minimizing environmental impacts.

For these reasons, this project design would have the lowest potential for adverse environmental impacts relative to other alternatives. Selecting an alternative project site or actions would likely not result in reduced potential environmental impacts and possibly would reduce overall project performance.

Because of extensive existing floodplain and wetlands damage resulting from almost 70 years of intense oil and gas production, the no-action alternative would result in little or no environmental benefit relative to project implementation. Thus, not implementing the project would have no effect on either reducing environmental impacts relative to project implementation, or in helping to restore area floodplains and wetlands to pre-activity conditions.

The entire project area is classified as a 100-year floodplain area by Flood Insurance Rate Maps (FIRM's) and as a wetlands area by U.S. Geological Survey Topographical Maps. The proposed action would conform with applicable state and local floodplain protection standards.

Issued in Washington, DC, on August 2, 1993.

Arthur M. Hartstein,

Deputy Director, Office of Oil and Gas Processing.

[FR Doc. 93–18858 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–P

DOE Response To Recommendation 93–3 of the Defense Nuclear Facilities Safety Board Improving DOE Technical Capability in Defense Nuclear Facilities Programs

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–3 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 8, 1993, (58 FR 32109) concerning improving DOE technical capability in defense nuclear facilities programs.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before September 7, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on July 22, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

July 23, 1993.

The Honorable John T. Conway, Chairman
Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, D.C. 20004.

Dear Mr. Conway: On June 1, 1993, the Defense Nuclear Facilities Safety Board approved Recommendation 93–3 which deals with improving the technical capability of personnel associated with defense nuclear facilities programs. Recommendation 93–3 is accepted by the Department and the basis of our acceptance is discussed below.

The Department has established a statement of core values which captures the substance of this Recommendation regarding a commitment to improving the capabilities of our staff. In addition, a specific policy expanding the appropriate core value statements in this area will be issued by October 31, 1993.

We will seek excepted appointment authority through appropriate Administration and congressional processes. The functions, numbers, and locations of the positions for which this authority is needed are yet to be developed. We are now initiating an effort leading to achieving this objective in advance of submitting a detailed implementation plan.

We agree that a technical personnel coordinator is necessary to assure timely and effective program execution. This coordinator must be qualified in technical training and recruitment and have a personal commitment and enthusiasm to forge a steadily improving program of technical qualification. He or she will have the authority to represent me and must have credibility with line managers to assure their needs are receiving proper priority. Additionally, this coordinator must have access to all top executives to assure that other competing forces do not dilute the focus of this effort. These attributes for the coordinator are key for realizing our objectives. However, the organizational assignment of the coordinator can be made in a number of areas and still be successful. In this regard, the appropriate individual to provide overall management on these initiatives is the Assistant Secretary for Human Resources and Administration. Since his responsibilities cover many intimately related supporting activities in the personnel and training areas, segregation of this initiative would detract from clear accountability. I will assure that the Assistant Secretary has the authority, resources, and support to carry out this mandate.

We will develop a broadly-based program giving strong consideration to each of the specific initiative you recommended in the areas of internal initiative, independent external assessment, and internal assessments.

As noted in my June 14, 1993, letter, this provides the opportunity for the Department to reevaluate current and past Board recommendations related to training and qualification and deal with them comprehensively. An "ad hoc" work group to respond to Recommendation 93–3 has been established and is reporting to the Acting Under Secretary. This group will be working with the task group you have created to address this recommendation.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93–18859 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Third Party Contractors Qualified To Prepare Environmental Impact Statements Under the Provisions of Section 2403(a) of the Energy Policy Act of 1992

August 2, 1993.

On February 25, 1993, the Federal Energy Regulatory Commission (Commission) announced in the Federal Register that three firms were qualified as third party contractors to prepare environmental impact statements (EISs) for hydroelectric projects under the provisions of the Section 2403(a) of the Energy Policy Act of 1992. The three firms are: CH2M Hill; EBASCO Services Incorporated; Stone & Webster Environmental Services.

On May 4, 1993, the Commission solicited in the Commerce Business Daily, qualifications statements from other contractors seeking status to prepare environmental impact statement (EISs) under the Third Party Contracting provisions of section 2403(a).

A technical panel of 7 Commission employees independently evaluated the statements of qualifications submitted. Twenty-four contractors met the minimum qualifications. The names of the 24 appear below.

(1) VERSAR, Inc.
(2) HDR Engineering
(3) Black & Veatch
(4) EDAW Inc.
(5) Burns & McConnell
(6) TAMS Consultants Inc.
(7) Dames & Moore
(8) Mead & Hunt, Inc.
(9) Woodward-Clyde Consultants
(10) Acres International Corp.
(11) Northrop, Devine & Tarbell, Inc.
(12) Parsons Brinckerhoff
(13) Lawler, Matusky & Shelly Engineers
(14) Chambers Group Inc.
(15) Greystone Development Consultants
(16) R.W. Beck & Associates
(17) Louis Berger & Associates, Inc.
(18) RMC Enviromental Services, Inc.
(19) ENTRIX, Inc.
(20) parametrix, Inc.
(21) EA Engineering, Science & Technology
(22) Environmental Resource Management, Inc.
(23) HARZA Engineering Company
(24) Keller Environmental Associates

Lois D. Cashell,

Secretary.

[FR Doc. 93–18794 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[P–2360–000, P–2363–000]

Minnesota Power & Light Co., Potlatch Corp.; Public Meeting Scheduled for Relicensing of St. Louis and Cloquet Hydroelectric Projects

August 2, 1993.

The Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing will hold two "Scoping" Meetings August 19, to identify issues that should be evaluated in the preparation an Environmental Impact Statement (EIS) for the relicensing of the St. Louis and Cloquet Hydroelectric Projects. The hydropower projects are located northwest of the City of Duluth, Minnesota on the St. Louis, Whiteface and Cloquet rivers.

The first scoping meeting will be held at 9 a.m. until noon in the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota. Issues of primary concern to government agencies will be the focus of the session.

The second scoping meeting will be held from 7 p.m. until 10 p.m. on the campus of the University of Minnesota-Duluth, Montague 80 Lecture Hall, 10 University Drive, Duluth, Minnesota. Issues of primary concern to the general public will be the focus of the meeting.

FERC has prepared a "Scoping Document" providing details of the projects proposed operations and a preliminary list of environmental impact issues to be examined. Copies of the document can be obtained by writing: FERC—St. Louis/Cloquet Project, c/o Tom Dupuis, CH2M Hill Inc. 310 West Wisconsin Ave, Suite 700, Milwaukee, WI 53203. Copies will also be available at the meetings.

Individuals, representatives of organizations and government agencies with environmental expertise and concerns are encouraged to attend the meetings to assist FERC in defining the issues to be identified in the EIS. Participants wishing to make oral comments at the scoping meetings are asked to keep them to five minutes.

Questions regarding the relicensing of the projects can be addressed to John Blair, Task Monitor, FERC, (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18826 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP79–473–006 and CP84–709–003]

Alabama-Tennessee Natural Gas Co.; Petition to Amend

August 2, 1993.

Take notice that on July 28, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket Nos. CP79–473–006 and CP84–709–003, a petition to amend the orders issued in Docket Nos. CP79–473 and CP84–709–000 pursuant to section 7(c) of the Natural Gas Act for authorization to sell natural gas it presently sells to North Mississippi Natural Gas Corporation (North Mississippi) to Tumlinson Engineering, Inc., d/b/a Burnsville Gas Company (Burnsville), all as more full set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Alabama-Tennessee requests authorization to sell 205 dt per day of natural gas it presently sells to North Mississippi to Burnsville. Alabama-Tennessee states that Burnsville has expressed interest in purchasing its natural gas requirements directly from Alabama-Tennessee and, thereby, eliminating North Mississippi as an intermediate. North Mississippi does not object to this arrangement, it is stated. Alabama-Tennessee says that the requested amendment would have no impact on its current load.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Louis D. Cashell,

Secretary.

[FR Doc. 93–18796 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–594–000]

ANR Pipeline Co.; Request Under Blanket Authorization

August 2, 1993.

Take notice that on July 29, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–594–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities for service to Iowa Southern Utilities Company (ISU), an existing customer of ANR, under ANR's blanket certificate issued in Docket No. CP82–480–000 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.

ANR proposes to construct and operate a new meter station in Lee County, Iowa, to be known as the South Burlington Meter Station, for the delivery of up to 1,000 dt equivalent of gas per day to ISU for use in its electric generating station located near South Burlington, Iowa. It is stated that ANR would provide a firm transportation service for ISU under ANR's part 284 blanket certificate and pursuant to the terms of ANR's Rate Schedule FTS–1. The cost of the proposed facilities is estimated at $800,000. It is asserted that deliveries would be within ISU's currently certificated entitlement from ANR. It is further asserted that the proposed delivery point would have no adverse impact on ANR's peak day and annual entitlements of any of ANR's existing 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 § 157.205 of the Regulations under the Natural Gas Act (18 CFR.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18795 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EF93–2011–000, EF93–2021–000 and EF93–2041–000]

Department of Energy—Bonneville Power Administration; Notice of Filing

August 2, 1993.

Take notice that on August 2, 1993, the Bonneville Power Administration (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(a)(2). BPA seeks interim approval for most of its proposed rates effective October 1, 1993, pursuant to the Commission's regulations at 18 CFR 300.20.

BPA's wholesale power and transmission rates are proposed to be increased. BPA's wholesale power rates are designed to increase revenues over the 2-year test period by approximately $478.5 million (excluding the residential exchange), which represents an increase of approximately 13.3 percent. BPA's transmission rates are designed to increase revenues by approximately $62.5 million, or 22.7 percent. With these increases BPA's total test period revenues (excluding the residential exchange) will be approximately $4.8 billion.

BPA requests approval effective October 1, 1993 through September 30, 1995 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–93 Priority Firm Power Rate; IP–93 Industrial Firm Power Rate; SI–93 Special Industrial Firm Power Rate; CE–93 Emergency Capacity Rate; NR–93 New Resource Firm Power Rate; NF–93 Nonfirm Energy Rate; SS–93 Share-the-Savings Energy Rate; and RP–93 Reserve Power Rate. BPA also requests approval of its proposed SP–93 Short-Term Surplus Firm Power Rate effective October 1, 1993, through September 30, 1998. BPA also requests approval of three modifications to VI–91 effective October 1, 1993 through September 30, 1995. BPA also requests approval of its Impact Aid Methodology.

BPA requests approval effective October 1, 1993 through September 30, 1995 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT–93.1 Formula Power Transmission; IR–93 Integration of Resources; IS–93 Southern Intertie Transmission; IN–93 Northern Intertie Transmission; IE–93 Eastern Intertie Transmission; ET–93 Energy Transmission; MT–91 Market Transmission; FPT–91.3 Formula Power Transmission; UFT–83 Use-of-Facilities Transmission; TGT–1 Townsend-Garrison Transmission; and AC–93 Southern Intertie Annual Cost.

BPA generally requests interim approval of its proposed 1993 wholesale power and transmission rates, effective October 1, 1993, pursuant to the Commission's regulations at section 300.20(b)(2)(i).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests concerning BPA's request for interim approval should be filed on or before August 20, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18825 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–592–000]

Nebraska Gas Transport Company versus K N Interstate Gas Co.; Notice of Complaint

August 2, 1993.

Take notice that on July 28, 1993, Nebraska Gas Transport Company (NebGas), P.O. Box 402, Holdredge, Nebraska 68949, filed in Docket No. CP93–592–000 a complaint alleging discriminatory treatment by K N Interstate Gas Company (KNI) and requesting that the Commission direct KNI to install a mainline tap to implement deliveries to NebGas, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

NebGas states that it applied to KNI for a mainline tap in Nebraska so that it could construct a local distribution

line to serve irrigation well motors and that KNI denied the request. It is indicated that the denial was based upon KNI's policy not to bypass existing local distribution facilities. NebGas alleges that KNI's decision is unfair, discriminatory and anti-competitive. NebGas also states that the rates charged by K N Energy (K N), KNI's affiliate, the existing local distribution company in the area, are completely arbitrary and not based on a reasonable rate of return.

NebGas indicates that Nebraska agricultural users have no place to address their dissatisfaction with the rates charged by a local distribution company because Nebraska has no corporation commission that regulates the natural gas industry. It is stated that each municipality is responsible for determining the natural gas rates under its jurisdiction.

It is also indicated that the customers that NebGas would serve behind the proposed tap would pay K N approximately $53,000 in transportation fees during the irrigation season. NebGas states that the local distribution line that K N owns to serve these customers could be reconstructed for approximately one-half of what they would pay in transportation fees in one year, and they would own the line in perpetuity. NebGas alleges that KNI's rationale for denying access to NebGas is to protect their parent company's interest. It is stated that NebGas needs access to KNI's system as leverage to negotiate more equitable rates or, in lieu of that relief, they need the ability to develop their own local distribution companies which would drastically reduce KNI's system as leverage to negotiate more equitable rates or, in lieu of that relief, they need the ability to develop their own local distribution companies which would drastically reduce transportation costs.

NebGas asserts that the purpose of Order No. 436 is to encourage competition and allow the end user more accessibility to the producer. NebGas asserts that allowing a company to charge more for moving gas hundreds of feet on an local distribution company than the FERC allows them to charge to move gas hundreds of miles on the interstate system is absurd. It is indicated that KNI, in its letter of refusal, states that its policy is not to bypass local distribution facilities. However, it is pointed out that KNI arbitrarily lowers transportation costs to retain some large end users on their system so as to prevent those end users from switching their incremental loads to alternate fuels. NebGas points out that irrigation load is also an incremental load but NebGas is forced to pay transportation rates priced off peak season rates. NebGas asserts that, if one class of customer can coerce KNI into negotiating discounts because of perceived problems, the irrigation customers should have the same options.

NebGas requests that the Commission order KNI to grant it a tap to its mainline and to deliver gas to those points as required in its tariff. NebGas states that the tap would allow NebGas to construct a local distribution company to serve its customers and compete on a level playing field with K N. In addition, NebGas also requests that the Commission enforcement staff commence a formal investigation of KNI's denial of NebGas request for access to KNI's pipeline to show if proper channels have been circumvented.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 1, 1993, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before September 1, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18828 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–158–000]

Phillips Petroleum Co., Phillips Gas Marketing Company and GPM Gas Corporation, Complainant v. ANR Pipeline Co. Respondent; Notice of Complaint

August 2, 1993.

Take notice that on July 27, 1993, Phillips Petroleum Company, Phillips Gas Marketing Company and GPM Gas Corporation (Phillips/GPM), filed with the Commission a complaint against ANR Pipeline Company (ANR) and move that the Commission issue an order requiring ANR to show cause why it should not be found in violation of a direct Commission order governing discovery of critical information about the ANR system, namely the facts about ANR's gathering facilities and unbundled rates.

Phillips/GPM state that ANR agreed as a condition of its Interim Settlement in Docket No. RP89–161–000 to develop and distribute a study as to the manner and desirability of creating separate, unbundled gathering services. Phillips/GPM state that ANR advised the Commission and all parties in its restructuring proceeding in Docket No. RS92–1–000 that "voluminous" workpapers supporting the gathering study were available in its Detroit, Michigan data room. Phillips/GPM state that ANR asserted in its June 23, 1993 Answer to Phillips/GPM June 8, 1993 petition to require that ANR comply with its gathering study obligations, that (i) the specific identity of ANR's gathering facilities and (ii) economic cost data (including the cost of fuel for gathering) were available for review in such workpapers.

Phillips/GPM argue that on July 9, 1993, GPM's representative found that almost none of the requisite data was available for his review. Phillips/GPM argue that ANR's failure to make workpapers available improperly prevents Phillips/GPM, other parties and the Commission from evaluating ANR's "Gathering Study". Phillips/GPM state that ANR has refused to provide Phillips/GPM with all of the workpapers supporting its "Gathering Study".

Phillips/GPM request that the Commission: (1) Issue an order to show cause why ANR should not be held in contempt of the Commission as a result of its apparently intentional withholding of "Gathering Study" workpapers; and (2) convene, if appropriate, an expedited hearing to determine any fact issues and to resolve whether the subject actions constitute improper conduct by any party appearing before the Commission.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. Answers to this complaint shall be due on or before September 1, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18827 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–008]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 2, 1993.

Take notice that on July 29, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Substitute Original Sheet No. 4E, with a proposed effective date of July 1, 1993.

On December 1, 1992, South Georgia filed a proposal in Docket No. RP92–74–005 (December 1 Filing) to implement the allocation by customer of any remaining balance in South Georgia's Account No. 191 attributable to any overcollections or undercollections on gas costs. South Georgia states that First Substitute Original Sheet No. 4E and the accompanying working papers are being filed in compliance with a Commission's letter order issued June 29, 1993, in Docket No. RP92–74–005 which directed South Georgia to reflect a reduction in the level of purchased gas demand costs reflected in its December 1 Filing, consistent with the Commission's March 16, 1993 order on rehearing in Docket Nos. CP92–6–007 and CP92–311–003.

South Georgia states that copies of the filing will be served upon all of South Georgia's customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92–74–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18798 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–586–000]

Williams Natural Gas Co., Application

August 2, 1993.

Take notice that on July 27, 1993, Williams Natural Gas Company (WNG), P.O. 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–586–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange agreement and gas sales agreement with Western Gas Interstate Company (Western) provided pursuant to WNG's Rate Schedule X–9, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that the exchange agreement terminated on May 15, 1991, pursuant to the terms of the agreement, and that Western requested termination of the sales agreement, pursuant to the terms of the agreement, effective May 15, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18797 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–75–NG]

Natural Gas Clearinghouse; Application for Blanket Authorization to Import and Export Natural Gas from and to Mexico, and to Export Liquefied Natural Gas to Any Foreign Country

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Natural Gas Clearinghouse (NGC) on July 16, 1993, as amended July 30, 1993, requesting blanket authorization to import from Mexico up to 200 Bcf of natural gas and export to Mexico up to 200 Bcf of natural gas. In addition, NGC requests authorization to export liquefied natural gas (LNG) to any foreign country. The combined volumes of natural gas and LNG exported by NGC would not exceed 200 Bcf. The term of the proposed authorization would begin on the date of the first delivery of either imports or exports after October 31, 1993, the expiration date of NGC's existing blanket import and export authorization granted by DOE/FE Opinion and Order No. 544 (1 FE ¶ 70,492, October 25, 1991).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 7, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building room 3H–

087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NGC is a partnership with its principal place of business in Houston, Texas. It proposes to import and export the gas and LNG under spot and short-term transaction, either on its own behalf or as the agent for others. NGC states that the specific terms of these arrangements would be negotiated individually, and the price would be competitive. The imports and exports would take place using existing pipeline and LNG facilities and no new construction would be involved. If this application is approved, NGC would be required to file quarterly reports with DOE giving the specific details of each transaction

DOE notes that NGC filed for a separate authorization (FE Docket No. 93–74–NG) to extend its existing authority to import and export natural gas from and to Canada and import LNG from any foreign country. NGC's current license for this authority, conferred by DOE/FE Opinion and Order No. 544, will expire October 31, 1993, Proceedings limited to such requests are generally shorter because they are not notice in the **Federal Register** for public comment. Rather, section 3 of the NGA, as amended by the Energy Policy Act of 1992, requires DOE to grant "without modification or delay" applications for natural gas imports from, or exports to a "nation with which the United States has in effect a free trade agreement requiring national treatment for trade in natural gas" (currently Canada). Such imports and exports are "deemed to be consistent with the public interest." This statutory public interest finding also applies to LNG imports (but not to LNG exports) regardless of whether the United States has a free trade agreement with a foreign supplier.

The decision on NGC's request for authority to import natural gas from Mexico will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing NGC's proposal to export natural gas to Mexico and export LNG to any foreign country, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. NGC asserts the proposed imports would be competitive and that there is no current need for the domestic gas and LNG that would be exported. Parties opposing NGC's application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In the response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

NGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 2, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18855 Filed 8–5–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–4688–7]

Acid Rain Program: Notice of Draft Permits and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Permit and Pubic Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Phase I Acid Rain permits to 37 utility plants and denial of draft Phase I Acid Rain permits to 2 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed at the

addresses listed in **SUPPLEMENTAL INFORMATION.**

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in Massachusetts: Linda Murphy, Director, Air, Pesticides, and Toxics Division, EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

For plants in New York: Steve Riva, Chief, Permitting and Toxics Support Section, Air Compliance Branch, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 500, New York, NY 10278.

For plants in Pennsylvania and West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

For plants in Kentucky: Winston Smith, Director, Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland St. NE, Atlanta, GA 30365.

For plants in Illinois and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Utah and Wyoming: Patricia Hull, Director Air, Radiation and Toxics Division, EPA Region 8, 999 18th St., Suite 500 (8ART), Denver, CO 80202–2466.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits:

For plants in Massachusetts, Ian Cohen at (617) 565–3229. Air Permits and Assessment Section, EPA Region 1 (APA), (address above).

For pants in New York, Gerry DeGaetano at (212) 264–6685. Air and Waste Management Division, EPA Region 2 (address above).

For Harrison, Fort Martin, Bruce Mansfield, New Castle, Jim Topsale at (215) 597–6553, for Glen Lyn Hatfield's Ferry, John E Amos, Mitchell (PA), Mitchell (WV) and Pleasants, Kimberly Peck at (215) 597–9839, for Armstrong, David Campbell at (215) 597–9781. Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), (address above).

For plants in Illinois, Cecelia Mijares at (312 886–0968, for plants in Ohio, Franklin Echevarria at (312) 886–9653. Air and Radiation Division, EPA Region 5 (A–18J), (address above).

For plants in Utah and Wyoming, Mark Komp at (303) 293–0956. Air, Radiation and Toxics Division EPA Region 8 (address above).

SUPPLEMENTARY INFORMATION: *Permits.*

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–99.

EPA recently stated, in a July 16, 1993 **Federal Register** notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *See id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995–99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995–99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for following utility plants:

Region 2

Goudey in New York: 2,337 allowances under 40 CFR 72.43 (compensating unit allowances) in 1995 to unit 11; 2,297 compensating unit allowances in 1995 to unit 12; 9,758 compensating unit allowances in 1995 to unit 13; and 6 conditional reduced utilization plans for 1995, 3 for units 11 and 12 and 3 for unit 13, in which Milliken units 1 and 2 Greenidge unit 6 designate units 11, 12 and 13 as compensating units. The designated representative is John I. Fiala.

Greenidge in New York: 7,342 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each 1995–1999 to unit 6; 2,913 compensating unit allowances in 1995 to unit 4; 2,883 compensating unit allowances in 1995 to unit 5; 8 conditional reduced utilization plans for 1995, in which unit 6 designates units 4 and 5, Goudey units 11, 12 and 13 Hickling units 1, 2, 3 and 4, Jennison units 1, 2, 3 and 4, and Somerset unit 1 as compensating units; 2 conditional reduced utilization plans for 1995 for units 4 and 5, in which Milliken units 1 and 2 designates units 4 and 5 as compensating units; 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on energy conservation measures; 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on improved unit efficiency measures; and 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on sulfur-free generation. A Phase I

extension plan in which unit 6 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Phase I Extension Reserve (Reserve). If Reserve allowances become available, unit 6 is eligible to receive 4,439 Reserve allowances in each year 1995–1996. The designated representative is John I. Fiala.

Hickling in New York: 1,310 compensating unit allowances in 1995 to unit 1; 1,288 compensating unit allowances in 1995 to unit 2; 1,496 compensating unit allowances in 1995 to unit 3; 1,565 compensating unit allowances in 1995 to unit 4; and 6 conditional reduced utilization plans for 1995, 3 for units 1 and 2, and 3 for units 3 and 4, in which Milliken units 1 and 2 and Greenidge unit 6 designate units 1, 2, 3 and 4 as compensating units. The designated representative is John I. Fiala.

Jennison in New York: 968 compensating unit allowances in 1995 to unit 1; 1,012 compensating unit allowances in 1995 to unit 2; 986 compensating unit allowances in 1995 to unit 3; 974 compensating unit allowances in 1995 to unit 4; and 6 conditional reduced utilization plans for 1995, 3 for units 1 and 2, and 3 for units 3 and 4, in which Milliken units 1 and 2, and Greenidge unit 6 designate units 1, 2, 3 and 4 as compensating units. The designated representative is John I. Fiala.

Milliken in New York: 10,876 Table 1 allowances in each year 1995–1999 to unit 1; 12,083 Table 1 allowances in each year 1995–1999 to unit 2; 16 conditional reduced utilization plans for 1995, 8 for each unit, in which units 1 and 2 designate Greenidge units 4 and 5, Goudey units 11, 12 and 13, Hickling units 1, 2, 3 and 4, Jennison units 1, 2, 3 and 4, and Somerset unit 1 as compensating units; 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on energy conservation measures; 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on improved unit efficiency measures; and 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on sulfur-free generation. A Phase I extension plan in which units 1 and 2 are control units and Greenidge unit 6, Hennepin unit 2, and Baldwin unit 3 are transfer units, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Milliken is eligible to receive the following Reserve allowances: 2,954 in each year 1995–1996, 3,493 in 1997, 3,453 in 1998, and 3,455 in 1999 to unit 1; and 1,520 for each year 1995–1996, 3,878 in 1997, 3,809 in 1998, and 3,816 in 1999 to unit 2. The designated representative is John I. Fiala.

Somerset in New York: 9,445 compensating unit allowances in 1995 to unit 1; and 3 conditional reduced utilization plans for 1995 in which Milliken units 1 and 2, and Greenidge unit 6 designate unit 1 as a compensating unit. The designated representative is John I. Fiala.

Region 3

Armstrong in Pennsylvania: 14,031 Table 1 allowances in each year 1995–1999 and 3,707 Reserve allowances in each year 1995–1996 to unit 1; 15,024 Table 1 allowances in each year 1995–1999 to unit 2; a Phase I extension plan in which unit 1 is a transfer unit for Harrison units 1, 2 and 3. The designated representative is David C. Benson.

Bruce Mansfield in Pennsylvania: 10,510 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 1; 11,537 substitution allowances in 1995 to unit 2; 11,922 substitution allowances in 1995 to unit 3; 3 conditional substitution plans for 1995, one for each substitution unit, in which W H Sammis units 5, 6 and 7, R E Burger units 5, 6, 7 and 8, Niles units 1 and 2, and Edgewater unit 13 designated units 1, 2 and 3 as substitution units; and 3 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

Hatfield's Ferry in Pennsylvania: 36,835 Table 1 allowances in each year 1995–1999 and 18,897 Reserve allowances in each year 1995–1996 to unit 1; 36,338 Table 1 allowances in each year 1995–1999 and 21,168 Reserve allowances in each year 1995–1996 to unit 2; 39,210 Table 1 allowances in each year 1995–1999 and 17,370 Reserve allowances in each year 1995–1996 to unit 3; a Phase I extension plan in which units 1, 2 and 3 are transfer units for Harrison units 1, 2 and 3; and 3 conditional substitution plans for 1995 in which unit 1 designates Pleasants unit 1 as a substitution unit, unit 2 designates Pleasants unit 2 as a substitution unit, and unit 3 designates Mitchell (PA) unit 33 as a substitution unit. The designated representative is David C. Benson.

Mitchell in Pennsylvania: 2,084 substitution allowances in 1996 to unit 33; and 1 conditional substitution plan for 1995 in which Hatfield's Ferry unit 3 designates unit 33 as a substitution unit. The designated representative is David C. Benson.

New Castle in Pennsylvania: 1,367 substitution allowances in 1995 to unit 1; 1,520 substitution allowances in 1995 to unit 2; 6,328 substitution allowances in 1995 to unit 3; 6,002 substitution allowances in 1995 to unit 4; 9,997 substitution allowances in 1995 to unit 5; 5 conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, W H Sammis units 5, 6, and 7, and R E Burger units 5, 6, 7 and 8 designate units 1, 2, 3, 4 and 5 as substitution units; 5 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

Fort Martin in West Virginia: 40,496 Table 1 allowances in each year 1995–1999 and 1,409 Reserve allowances in each year 1995–1996 to unit 1; 40,116 Table 1 allowances in each year 1995–1999 and 4,002 Reserve allowances in each year 1995–1996 to unit 2; and a Phase I extension plan in which units 1 and 2 are transfer units for Harrison units 1, 2 and 3. The designated representative is David C. Benson.

Glen Lyn in West Virginia: 7,006 substitution allowances in 1995 to unit 6; and a conditional substitution plan for 1995 in which Mitchell (WV) unit 2 designates unit 6 as a substitution unit. The designated representative is John M. McManus.

Harrison in West Virginia: 47,341 Table 1 allowances in each year 1995–1999, 35,272 Reserve allowances in each year 1995–1996, and 20,737 Reserve allowances in each year 1997–1999 to unit 1; 44,936 Table 1 allowances in each year 1995–1999, 46,244 Reserve allowances in each year 1995–1996, and 19,552 Reserve allowances in each year 1997–1999 to unit 2; 40,408 Table 1 allowances in each year 1995–1999, 50,319 Reserve allowances in each year 1995–1996, and 17,322 Reserve allowances in each year 1997–1999 to unit 3; and a Phase I extension plan that requires units 1, 2 and 3 to install qualifying Phase I technology and that designates Armstrong unit 1, Fort Martin units 1 and 2, Hatfield's Ferry units 1, 2 and 3, R E Burger units 5, 6, 7 and 8, Niles units 1 and 2, and Eastlake unit 5 as transfer units. The designated representative is David C. Benson.

John E Amos in West Virginia: 21,512 substitution allowances in 1995 to unit 1; 24,664 substitution allowances in 1995 to unit 2; and two conditional

substitution plans for 1995 in which Mitchell (WV) unit 1 designates unit 1 as a substitution unit, and Mitchell (WV) unit 2 designates unit 2 as a substitution unit. The designated representative is John M. McManus.

Mitchell in West Virginia: 42,823 Table 1 allowances in each year 1995–1999 to unit 1; 44,312 Table 1 allowances in each year 1995–1999 to unit 2; three conditional substitution plans for 1995 in which unit 1 designates John E Amos unit 1 as a substitution unit, unit 2 designates John E Amos unit 2 as a substitution unit, and unit 2 designates Glen Lyn unit 6 as a substitution unit; and two conditional reduced utilization plans, one for each unit, that rely on energy conservation measures. The designated representative is John M. McManus.

Pleasants in West Virginia: 16,762 substitution allowances in 1995 to unit 1; 19,230 substitution allowances in 1995 to unit 2; 2 conditional substitution plans for 1995 in which Hatfield's Ferry unit 1 designates unit 1 as a substitution unit, and Hatfield's Ferry unit 2 designates unit 2 as a substitution unit. The designated representative is David C. Benson.

Region 4

Elmer Smith in Kentucky: 6,348 Table 1 allowances in each year 1995–1999 to unit 1; 14,081 Table 1 allowances in each year 1995-1999 to unit 2. A Phase I extension plan that requires units 1 and 2 to install qualifying Phase I technology is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Elmer Smith is eligible to receive the following Reserve allowances: 9,540 in each year 1995–1996 and 5,192 in each 1997–1999 to unit 1, and 9,885 in each year 1995–1999 and 2,150 each year 1997–1999 to unit 2. The designated representative is Robert M. Carper.

Region 5

Baldwin in Illinois: 46,052 Table 1 allowances in each year 1995–1999 to unit 1; 48,695 Table 1 allowances in each year 1995–1999 to unit 2; 46,644 Table 1 allowances in each year 1995–1999 to unit 3; 3 conditional substitution plans for 1995 in which unit 1 designates Wood River unit 4 as a substitution unit, unit 2 designates Wood River unit 5 as a substitution unit, and unit 3 designates Havana unit 9 as a substitution unit; 1 substitution plan for 1995 in which unit 2 designates Jim Bridger units BW71, BW72 and BW73, Wyodak unit BW91, and Gadsby unit 3 as substitution units; 6 reduced utilization plans, 2 for each unit (one for 1995 and one for 1996–1999), that rely on sulfur free generation; and 3 conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. A Phase I extension plan in which unit 3 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Baldwin unit 3 is eligible to receive 5,436 Reserve allowances in 1995 and 5,461 Reserve allowances in 1996. The designated representative is Jene L. Robinson.

Havana in Illinois: 6,399 substitution allowances in 1995 to unit 9; one conditional substitution plan for 1995 in which Baldwin unit 3 designates unit 9 as a substitution unit; and one conditional reduced utilization plan for unit 9 that relies on sulfur-free generation. The designated representative is Jene L. Robinson.

Hennepin in Illinois: 20,182 Table I allowances in each year 1995–1999 to unit 2; 10,012 substitution or compensating allowances in 1995 to unit 1; one conditional substitution plan for 1995 in which unit 2 designates unit 1 as a substitution unit that can be activated only for years for which a reduced utilization plan designating unit 1 as compensating unit is not activated; 3 reduced utilization plans for unit 2, one active plan for 1995, one active plan for 1996–1999, and one conditional plan, that rely on sulfur-free generation; the part of a conditional reduced utilization plan for unit 2 for 1995 that designates unit 1 as a compensating unit, with the limitation that it can be activated only for years in which the conditional reduced utilization plan for unit 1 that relies on sulfur-free generation (described below) is not activated and in which a substitution plan designating unit 1 is not activated; the part of a conditional reduced utilization plan for unit 2 that relies on sulfur-free generation; and one conditional reduced utilization plan for unit 1 that relies on sulfur-free generation, with the limitation that it can be activated only for years in which the conditional reduced utilization plan in which unit 2 designates unit 1 as a compensating unit (described above) is not activated. A Phase 1 extension plan in which unit 2 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 2 is eligible to receive 9,914 Reserve allowances in each year 1995–1996. The designated representative is Jene L. Robinson.

Vermilion in Illinois: 9,735 Table 1 allowances in each year 1995–1999 to unit 2; 12,972 substitution or compensating allowances in 1995 to unit 1; one conditional substitution plan for 1995 in which unit 2 designates unit 1 as a substitution unit, that can be activated only for years in which a reduced utilization plan designating unit 1 as compensating unit is not activated; 3 reduced utilization plans for unit 2, one active plan for 1995, one active plan for 1996–1999, and one conditional plan, that relies on sulfur-free generation; the part of a conditional reduced utilization plan for unit 2 for 1995 that designates unit 1 as a compensating unit, with the limitation that it can be activated only for years in which the conditional reduced utilization plan for unit 1 that relies on sulfur-free generation (described below) is not activated and in which a substitution plan designating unit 1 is not activated; the part of a conditional reduced utilization plan for unit 2 that relies on sulfur-free generation; and one conditional reduced utilization plan for unit 1 that relies on sulfur-free generation, with the limitation that it can be activated only for years in which the conditional reduced utilization plan in which unit 2 designates unit 1 as a compensating unit (described above) is not activated. The designated representative is Jene L. Robinson.

Wood River in Illinois: 2,018 substitution allowances in 1995 to unit 4; 9,028 substitution allowances in 1995 to unit 5; 2 conditional substitution plans for 1995, one in which Baldwin unit 1 designates unit 4 as a substitution unit and one in which Baldwin unit 2 designates unit 5 as a substitution unit; and two conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. The designated representative is Jene L. Robinson.

Acme in Ohio: 9 substitution allowances in 1995 to unit 13; 13 substitution allowances in 1995 to unit 14; 17 substitution allowances in 1995 to unit 15; 1,930 substitution allowances in 1995 to unit 16; 740 substitution allowances in 1995 to unit 91; 662 substitution allowances in 1995 to unit 92; five substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 13, 14, 15, 91 and 92 as substitution units; one conditional substitution plan for 1995 in which Ashtabula unit 7 designates unit 16 as a substitution unit; five reduced utilization plans for units 13, 14, 15, 91 and 92 that rely on energy conservation measures and sulfur-free generation; and one conditional reduced utilization plan for unit 16 that relies on energy conservation and improved unit

efficiency measures, and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

Ashtabula in Ohio: 18,351 Table 1 allowances in each year 1995–1999 to unit 7; 10,753 substitution allowances in 1995 to unit 8; 9,173 substitution allowances in 1995 to unit 9; 8,275 substitution allowances in 1995 to unit 10; 8,706 substitution allowances in 1995 to unit 11; fourteen conditional substitution plans for 1995, one for each substitution unit, in which unit 7 designates Ashtabula units 8, 9, 10 and 11, Bay Shore units 1, 2, 3 and 4, Acme unit 16, and Lake Shore units 18, 91, 92, 93 and 94 as substitution units; five substitution plans for 1995, one for each substitution unit, in which unit 7 designates Acme units 13, 14, 15, 91 and 92 as substitution units; four conditional reduced utilization plans for units 8, 9, 10 and 11 that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and a reduced utilization plan for unit 7 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. A Phase I extension plan in which unit 7 is a transfer unit for Elmer Smith is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 7 is eligible to receive 7,279 Reserve allowances in each year 1995–96. The designated representative is Fred J. Lange, Jr.

Bayshore in Ohio: 7,546 substitution allowances in 1995 to unit 1; 7,311 substitution allowances in 1995 to unit 2; 7,585 substitution allowances in 1995 to unit 3; 12,481 substitution allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 1, 2, 3 and 4 as substitution units; and four conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

Eastlake in Ohio: 8,551 Table 1 allowances in each year 1995–1999 to unit 1; 9,471 Table 1 allowances in each year 1995–1999 to unit 2; 10,984 Table 1 allowances in each year 1995–1999 to unit 3; 15,906 Table 1 allowances in each year 1995–1999 to unit 4; 37,349 Table 1 allowances in each year 1995–1999 and 5,146 Reserve allowances in each year 1995–1996 to unit 5; a Phase I extension plan in which unit 5 is a transfer unit for Harrison; and five reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. A Phase I extension plan in which unit 1 is a transfer unit for Elmer Smith is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 1 is eligible to receive 7,229 Reserve allowances in each year 1995–1996. The designated representative is Fred J. Lange, Jr.

Edgewater in Ohio: 5,536 Table 1 allowances in each year 1995–1999 to unit 13; 1,062 substitution allowances in 1995 to unit 11; 1,145 substitution allowances in 1995 to unit 12; 23 conditional substitution plans for 1995, one for each substitution unit, in which unit 13, Niles units 1 and 2, W H Sammis units 5, 6 and 7, and R E Burger units 5, 6, 7 and 8 designate units 11 and 12, W H Sammis units 1, 2, 3 and 4, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; 2 conditional reduced utilization plans, one each for units 11 and 12, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and part of a conditional reduced utilization plan for unit 13 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. Part of a conditional reduced utilization plan for unit 13 that designates New England Power Company's Brayton Point units 1, 2, 3 and 4 and Salem Harbor units 1, 2 and 3 as compensating units is disapproved. The designated representative is Howard C. Couch, Jr.

Gorge in Ohio: 2,553 substitution allowances in 1995 to unit 25; 2,860 substitution allowances in 1995 to unit 26; two conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, R E Burger units 5, 6, 7 and 8, and W H Sammis units 5, 6 and 7 designate units 25 and 26 as substitution units; and two conditional reduced utilization plans for units 25 and 26, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

Lake Shore in Ohio: 4,767 substitution allowances in 1995 to unit 18; 44 substitution allowances in 1995 to unit 91; 80 substitution allowances in 1995 to unit 92; 62 substitution allowances in 1995 to unit 93; 102 substitution allowances in 1995 to unit 94; five conditional substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 18, 91, 92, 93 and 94 as substitution units; three conditional reduced utilization plans for units 18, 91 and 92 that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and two conditional reduced utilization plans for units 92 and 94 that rely on energy conservation measures and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

Niles in Ohio: 7,608 Table 1 allowances in each year 1995–1999, 10,632 Reserve allowances in 1995, and 10,896 Reserve allowances in 1996 to unit 1; 9,975 Table 1 allowances in each year 1995–1999, 4,831 Reserve allowances in 1995, and 4,346 Reserve allowances in 1996 to unit 2; a Phase I extension plan in which units 1 and 2 are transfer units for Harrison; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2, Edgewater unit 13, W H Sammis units 5, 6 and 7, and R E Burger units 5, 6, 7 and 8 designate W H Sammis units 1, 2, 3 and 4, Edgewater units 11 and 12, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; and 2 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

R E Burger in Ohio: 3,371 Table 1 allowances in each year 1995–1999, 1,316 Reserve allowances in 1995, and 1,426 Reserve allowances in 1996 to unit 5; 3,371 Table 1 allowances in each year 1995–1999, 1,325 Reserve allowances in 1995, and 1,436 Reserve allowances in 1996 to unit 6; 11,818 Table 1 allowances in each year 1995–1999 and 10,155 Reserve allowances in each year 1995–1996 to unit 7; 13,626 Table 1 allowances in each year 1995–1999 and 9,501 Reserve allowances in each year 1995–1996 to unit 8; 2,820 substitution allowances in 1995 to unit 1; 2,751 substitution allowances in 1995 to unit 2; 2,891 substitution allowances in 1995 to unit 3; 2,956 substitution allowances in 1995 to unit 4; a Phase I extension plan in which units 5, 6, 7, and 8 are transfer units for Harrison; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 5, 6, 7 and 8, Niles units 1 and 2, Edgewater unit 12, and W H Sammis Units 5, 6, and 7 designate units 1, 2, 3 and 4, W H Sammis units 1, 2, 3, and 4, Edgewater units 11 and 12, Gorge units 25 and 26, Toronto units 9, 10, and 11, Bruce Mansfield units 1, 2 and 3, and new Castle units 1, 2, 3, 4 and 5 as substitution units; and eight

conditional reduced utilization plans, one for each unit, that relay on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

Toronto in Ohio: 5,325 substitution allowances in 1995 to unit 9; 9,505 substitution allowances in 1995 to unit 10; 10,274 substitution allowances in 1995 to unit 11, three conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, R E Burger units 5, 6, 7, and 8, and W H Sammis units 5, 6 and 7 designate units 9, 10 and 11 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

W H Sammis in Ohio: 26,496 Table 1 allowances in each year 1995–1999 to unit 5; 43,773 Table 1 allowances in each year 1995–1999 to unit 6; 47,380 Table 1 allowances in each year 1995–1999 to unit 7; 8,390 substitution allowances in 1995 to unit 1; 7,356 substitution allowances in 1995 to unit 2; 8,388 substitution allowances in 1995 to unit 3; 7,432 substitution allowances in 1995 to unit 4; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 5, 6, and 7, Edgewater unit 13, Niles units 1 and 2, and R E Burger units 5, 6, 7, and 8 designate units 1, 2, 3 and 4, Edgewater units 11 and 12, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; and seven conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

Region 8

Gadsby in Utah: 1,445 substitution allowances in 1995 to unit 3; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates unit 3 as a substitution unit. The designated representative is Jene L. Robinson.

Jim Bridger in Wyoming: 19,139 substitution allowances in 1995 to unit BW71; 18,739 substitution allowances in 1995 to unit BW72; 17,944 substitution allowances in 1995 to unit BW73; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates units BW71, BW72, and BW73 as substitution units. The designated representative is Jene L. Robinson.

Wyodak in Wyoming: 16,855 substitution allowances in 1995 to unit BW91; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates unit BW91 as a substitution unit. The designated representative is Jene L. Robinson.

EPA proposes to deny draft Phase I permits and compliance plans for the following utility plants:

Region 1

Brayton Point in Massachusetts: a reduced utilization plan in which units 1, 2, 3 and 4, and Salem Harbor units 1, 2 and 3 are designated as compensating units for Edgewater unit 13; and four reduced utilization plans in which units 1, 2, 3 and 4 rely on energy conservation measures and sulfur-free generation. The designated representative is Andrew H. Aitken.

Salem Harbor in Massachusetts: a reduced utilization plan in which units 1, 2, and 3 and Brayton Point units 1, 2, 3 and 4 are designated as compensating units for Edgewater 13; and three reduced utilization plans in which units 1, 2 and 3 rely on energy conservation measures and sulfur-free generation. The designated representative is Andrew H. Aitken.

Addresses: The administrative records for each plant may be viewed during normal operating hours at the following locations:

Region 1

For plants in Massachusetts: EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

Region 2

For plants in New York: EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 505, New York, NY 10278.

Region 3

For plants in Pennsylvania and West Virginia: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Region 4

For Elmer Smith: (1) EPA Region 4 Library, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347–4216; (2) Division of Air Quality, Department of Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Franfort, KY 40601; and (3) Davies County Public Library, 450 Griffith Ave., Owensboro, KY 42301, (502) 684–0211.

Region 5

For plants in Illinois: (1) EPA Region 4, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604, and (2) Illinois Environmental Protection Agency Library, 2200 Churchill Road, Springfield, IL 62706.

For plants in Ohio: EPA Region 4, Ralph H. Metcalfe Federal Bldg., 17th floor, 77 West Jackson Blvd., Chicago, IL 60604

Region 8

For plants in Utah and Wyoming: EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Dated: August 3, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–18840 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–M

Acid Rain Program: Notice of Final Permits

[FRL–4688–8]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing five-year, Phase I Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 3 utility plants: Coffeen, Grand Tower and Joppa Steam in Illinois.

FOR FURTHER INFORMATION CONTACT: Cecilia Mijares at (312) 886–0968. Air and Radiation Division, EPA Region 5 (AR-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: August 3, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–18841 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4623–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 19, 1993 through July 23, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental

Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–NPS–D61037–DC Rating EC2, New Stadium Construction and Operation, Implementation, Anacostia Park, Washington, DC.

Summary: EPA expressed environmental concerns regarding the insufficient evaluation of alternatives, primarily the upgrade/renovation of the existing RFK stadium.

EPA raised concerns regarding cumulative impacts to air, water, open space and community values resulting from the proposed stadium and other proposed projects in the immediate area.

ERP No. DS–USA–K10009–TT Rating EO2, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, New Information, Test Range Facility Construction and Support Services, Republic of the Marshall Islands.

Summary: EPA expressed environmental objections regarding the projects potential for significant impacts to natural and cultural resources. EPA requested mitigation or alternatives that would avoid potential adverse effects of quarrying, dredging, filling and construction. EPA also recommended reestablishing the letter of authority procedure considered during the development of standards and procedures for U.S. Army activities on Kwajalein Atoll.

Final EISs

ERP No. F–AFS–K65144–CA, 1992 Cleveland Watershed/Fire Recovery Project, Eldorado National Forest, South Fork American River, Eldorado, Alpine and Amador Counties, CA.

Summary: EPA continued to have environmental concerns with cumulative environmental impacts to water quality and watersheds, and impacts to contiguous riparian and mammal biological corridors. EPA requested that the EIS Record of Decision identify appropriate mitigation measures for these impacts.

ERP No. F–COE–E30035–NC, Carolina Beach and Vicinity/Area South Project, Beach Erosion Control and Hurricane Wave Protection, Implementation, New Hanover County, NC.

Summary: EPA continued to have environmental concerns with the cumulative impacts of beach nourishment projects and their lack of total projected life time cost.

ERP No. F–FHW–K40186–AZ, AZ–87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE Section 404 Permit Issuance, Maricopa County, AZ.

Summary: EPA expressed continued concerns regarding potential project impacts to water quality, air quality and the Sycamore Creek Riparian Area. EPA requested that the Record of Decision contain a commitment to assess and monitor these impacts and to implement remedial measures should monitoring reveal that adverse impacts to air and water quality are occurring.

ERP No. F–UAF–K11016–CA, Norton Air Force Base (AFB) Disposal and Reuse, Implementation, San Bernardino, CA.

Summary: EPA believed that the FEIS does not sufficiently discuss contaminated sites, cleanup actions, and the coordination process to be used to ensure that reuse and site cleanup decisions are properly integrated. EPA recommended that the Air Force provide additional information in the EIS Record of Decision on reuse/contaminated site cleanup integration and the status of cleanup actions, including specific terms, conditions, and mitigation measures to promote wise reuse and to promote pollution prevention, waste minimization, conservation and recycling.

ERP No. FS–TVA–A82025–00, Control of Eurasian Watermilfoil, Updated Information concerning the Aquatic Plant Management Program, Implementation, Tennessee Valley Region.

Summary: EPA identified that herbicide applications should be proscribed to those situations in which there are no other practicable alternatives. EPA supported the monitoring program for determining potential water quality impacts from their reduced use.

Dated: August 5, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–18879 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4623–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 26, 1993 Through July 30, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930253, Draft EIS, AFS, ID, Sunshine Timber Sale, Implementation, Salmon National Forest, Cobalt Ranger District, Big Deer Creek, Lemhi County, ID, Due: August 27, 1993, Contact: Barbara A. Levesque (208) 756–2240.

EIS No. 930254, Final EIS, EPA, FL, Fort Pierce Harbor Offshore Ocean Dredged Material Disposal Site (ODMDs), Designation, Fort Pierce, FL, Due: September 7, 1993, Contact: Wesley B. Crum (404) 347–1740.

EIS No. 930255, Draft EIS, AFS, MT, Middle Fork Ecosystem Management Project, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead River, Flathead County, MT, Due: September 21, 1993, Contact: Heidi Trechsel (406) 387–5243.

EIS No. 930256, Final Supplement, NOA, PR, VI, Shallow-Water Reef Fish Fishery Management Plan, Amendment 2, Updated Information, Puerto Rico and U. S. Virgin Island, Due: September 7, 1993, Contact: Sr. Miquel Rolon (809) 753–6910.

EIS No. 930257, Draft Supplement, FHW, MA, Central Artery/I–93 Third Harbor Tunnel/I–90 Extension, Updated and Additional Information, Design Alternatives for the Charles River Crossing, Funding, US COE Section 10 and 404 Permits, US CGD Permits and EPA NPDES Permit, Suffolk County, MA, Due: October 5, 1993, Contact: Paul Stakutis (617) 951–6496.

EIS No. 930258, Final EIS, USN, VA, MD, Dahlgren Division, Naval Surface Warfare Center Base Realignment, New Construction and Renovation, Westmoreland, Stafford, Spotsylvania and King George Counties, VA and Charles County, MD, Due: September 7, 1993, Contact: Larry Chernikoff (202) 433–3387.

EIS No. 930259, FINAL EIS, FHW, AZ, Price Freeway (Loop 101) Corridor Construction, Price Road between the Superstition Freeway to Pecos Road, Funding and Right-of-Way Acquisition, Maricopa County, AZ, Due: September 7, 1993, Contact: Ken Davis (602) 379–3646.

EIS No. 930260, FINAL EIS, AFS, AK, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: September 7, 1993, Contact: David Arrasmith (907) 225–3101.

EIS No. 930261, FINAL EIS, DOE, MO, Weldon Spring Site, Chemical Plant

Area Remedial Action Feasibility Study, Implementation, St. Charles County, MO, Due: September 7, 1993, Contact: Stephen McCracken (314) 441–8086.

Amended Notices

EIS No. 930164, DRAFT EIS, BLM, NV, Bedell Flat Water and Natural Gas Pipelines Crossing Project, Right-of-Way Grants and COE Section 404 Permit, Washoe County, NV , Due: September 22, 1993, Contact: James M. Phillips (702) 885–6000. Published FR 5–21–93—Review period extended.

Dated: August 3, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–18878 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4689–1]

Connecticut: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to fully approve the adequacy of the State of Connecticut's municipal solid waste permitting program, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The state of Connecticut has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region I has reviewed Connecticut's MSWLF permit program adequacy application and has made a tentative determination that all portions of Connecticut's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Connecticut's application for program adequacy determination is available for public review and comment at the places listed in the "**ADDRESSES**" section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the Region I Solid Waste Program or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing, in Hartford, Connecticut, on the date given below in the "**DATES**" section. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "**CONTACTS**" section below.

DATES: All comments on Connecticut's application for a determination of adequacy must be received by the close of business on September 7, 1993. If there is sufficient interest, a public hearing will be held on September 23, 1993 at 10 a.m., at the State Legislative Office Building, Room 2C, Hartford, Connecticut. The State will participate in the public hearing, if held by EPA on this subject.

ADDRESSES: Copies of Connecticut's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying: Connecticut Department of Environmental Protection, Waste Management Bureau, Planning and Standards Division, 4th Floor, 79 Elm Street, Hartford, CT 06106; U.S. EPA Region I, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687.

Written comments should be sent to Mr. John F. Hackler, Chief, Solid Waste Section, mail code HER-CAN6, EPA Region I, Solid Waste Section, John F. Kennedy Federal Building, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Ms. Connie Dewire, mail code HER-CAN6, telephone (617) 573–5719.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and

existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Connecticut

On April 1, 1993, EPA, Region I, received Connecticut's final MSWLF Permit program application for adequacy determination. Region I reviewed the final application and submitted comments to Connecticut. Connecticut addressed EPA's comments and submitted a revised final application for adequacy determination on July 14, 1993. Region I has reviewed Connecticut's revised application and has tentatively determined that all portions of Connecticut's MSWLF program meet all the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Connecticut's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

Region I based its decision of tentative full approval on the current, overall approach of MSWLF disposal in Connecticut which includes up front, a determination of need for new landfill capacity, restrictive siting provisions, both groundwater and surface water permitting requirements, design requirements which include a "worst case" demonstration prior to approval, a restrictive groundwater use classification system, institutional controls over property, and as necessary, the authority to require remediation for releases to the environment. In addition, the State's current Solid Waste Management Plan has established the following order of priority for managing solid waste: Source reduction; recycling; resource recovery; waste-to-energy; incineration, and finally, landfilling, an approach which will further reduce the use or development of existing or new MSWLF's.

As a result of the State's overall approach to solid waste management, the Connecticut Department of Environmental Protection expects more than three quarters of the fifty four (54) facilities active as of October 9, 1991 to close (under Connecticut statutory and regulatory requirements).

The design standard for new and lateral expansions of landfills currently in effect in the State includes a dual liner system as well as a primary and secondary leachate collection system. The current siting criteria carefully restrict new or expanding landfills to hydrogeologic settings that do not conflict with drinking water resources and ensure the protection of surface water quality.

In 1980, Connecticut adopted water quality standards and classifications that apply to groundwater as well as surface water. The water quality standards, among other things, define the types of discharges that can be considered in the various water classification areas of the State.

Under Connecticut's current program, MSWLFs can only be sited in areas which receive a GC groundwater classification. A GC classification means the subject ground waters: (1) Are not suitable for development as drinking water supplies; (2) are hydraulically connected to class B surface waters; and (3) are a hydrogeologic setting for which the flow path of groundwater or of a discharge to it, can be defined, predicted and, if necessary, remediated.

For example, the groundwater flow path from an upland till site underlain by discretely fractured bedrock could not be predicted or defined with any confidence, and a discharge of pollutants to such a site could not be controlled, and most likely, could not be successfully remediated. Such a setting, therefore, would not be classified GC, and no waste disposal facility, regardless of the design of liner and collection systems, could be permitted.

Key provisions in Connecticut's current MSWLF permitting requirements are:

(1) The applicant must own or control the entire land area for which groundwater would be affected in quality—in any way, not just an exceedence of a drinking water standard—by the discharge of leachate. This area, also called the zone of influence, must be determined as if no liner or collection system existed. This requirement, in conjunction with the GC siting requirement, provides for the complete segregation of groundwater used or which could potentially be used for drinking water.

(2) The applicant must demonstrate that under worst case conditions, the discharge of the plume would not cause aquatic toxicity in the surface water quality criteria. Worst case conditions are assumed to be (A) no liner and (B) maximum pollutant concentrations in leachate discharging the annual flow instantaneously to surface water under extreme low flow conditions with (C) no attenuation prior to discharge.

By currently restricting landfills to such settings, Connecticut has protected all state drinking water resources, whether surface or groundwater, from the potential impact of leachate—an approach which EPA has determined to be an alternate to the 40 CFR part 258 requirements, but still as protective as the federal requirements under 40 CFR part 258. In addition, the State requirements are no less stringent than the requirements at 40 CFR part 258.

To further protect the State's water resources, the solid waste permit process requires the State to deny a permit if the Commissioner of the Connecticut Department of Environmental Protection determines that a facility or disposal area is not necessary to meet the solid waste disposal needs of the State and would result in substantial excess disposal capacity in the State.

Connecticut will be using alternate, but equally effective methods, to ensure that provisions which are technically comparable and no less stringent than the revised federal criteria are being applied in Connecticut. The revised Guidelines for Engineering Evaluations of Solid Waste Disposal Areas are applicable to all existing MSWLFs and to all MSWLF permit applications effective July 1, 1993. To ensure compliance with all of the revised federal criteria, Connecticut has revised its existing Guidelines for Engineering Evaluations of Solid Waste Disposal Areas in the following areas, and will implement its MSWLF permit program through enforceable permit conditions.

1. Connecticut has revised its current permit requirements with the adoption of the following definitions as required by the revised federal criteria, 40 CFR 258.2: Active life, active portion, owner, saturated zone, state, and waste management unit boundary.

2. Connecticut has revised its current permit requirements to comply with the new location restrictions of 40 CFR 258.10, 258.11. 258.12, 258.13, 258.14, 258.15, and 258.16, which pertain to airport safety, floodplains, wetlands, fault areas, seismic impact zones,

unstable areas and closure of existing MSWLF units.

3. Connecticut has revised its current permit requirements to comply with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, 258.29, which describe procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, liquids restrictions, and recordkeeping requirements.

4. Connecticut has revised its current permit requirements to comply with the new ground-water monitoring and corrective action requirements of 40 CFR 258.50, 258.54, 258.55, 258.56, 258.57, which describe applicability, detection and assessment monitoring programs, assessment of corrective measures, and selection of remedy.

5. Connecticut has revised its current permit requirements to comply with the new closure and post-closure care requirements of 40 CFR 258.60, and 258.61.

6. Connecticut has revised its current permit requirements to comply with the new financial assurance requirements of 40 CFR 258.70, 258.71, 258.73, 258.74, which describe applicability and effective date, financial assurance for closure, corrective action, and allowable mechanisms.

Connecticut's Department of Environmental Protection will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR part 258, to assure compliance with current state requirements. The State of Connecticut is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Connecticut's program. EPA will make a final decision on approval of the State of Connecticut's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a) provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 U.S.C. 6972 to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 93–18843 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4689–2]

Proposed Administrative Order on Consent; Lowry Landfill Site, Arapahoe County, CO

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *de minimis* settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed *de minimis* settlement under section 122(g) concerning the Lowry Landfill Site in Arapahoe County, Colorado (the Site). The proposed Administrative Order on Consent (AOC) requires 5 potentially responsible parties (PRP) to pay an aggregate total of $653,570.97 to resolve their liability to the EPA related to response actions taken or to be taken at the Site.

DATES: Comments must be submitted by no later than September 7, 1993.

ADDRESSES: Comments should be addressed to Gwendolyn Hooten (8HWM–SR), Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, and should refer to: In the matter of Lowry Landfill *De Minimis* Settlement.

FOR FURTHER INFORMATION CONTACT: James M. Stearns, Office of Regional Counsel, EPA Region VIII, at (303) 294–7197.

SUPPLEMENTARY INFORMATION: Notice of section 122(g) *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the following parties, for the following amounts: Colorado Department of Agriculture [$7,441.98]; Colorado Department of Highways [$175,203.21]; Colorado School of Mines [$46,246.59]; Colorado Surplus Agency [$369,316.74]; and Colorado State University (Environmental Health Services) [$55,362.45]. By the terms of the proposed AOC, these PRPs will together pay $653,570.97 to the Hazardous Substances Trust Fund (Superfund). The $653,570.97 represents approximately 0.122% of the total anticipated costs for the Site upon which this settlement was based.

In exchange for payment, U.S. EPA will provide the settling parties with a covenant not to sue for liability under sections 106 and 107(a) of CERCLA, including liability for EPA past costs, the one-time cost of remedy, future EPA oversight costs, and future operation and maintenance of the as-yet unselected remedy. The covenant not to sue includes actions under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act (RCRA)).

The amount that each individual PRP will pay, as shown above, equals $3.77 multiplied by the number of gallons of waste the party sent to the Site (Base Amount), plus a premium payment of 50% or 200% of the Base Amount, as specified by each Respondent PRP in the AOC. The per gallon charge of $3.77 was calculated by dividing the total estimated response costs of the Site ($536,000,000) by the total estimated volume of waste disposed of at the Site (142,295,420 gallons). For parties paying a 50% premium, there is an exception to the covenant not to sue if total response costs as the Site exceed $536 million. For parties paying the 200% premium, there is no such limitation of the U.S. EPA's covenant not to sue.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed *de minimis* settlement.

A copy of the proposed AOC may be obtained in person or by mail from Gwendolyn Hooten (8HWM–SR), U.S.

Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405. Additional background information relating to the *de minimis* settlement is available for review at the Superfund Records Center at the above address, and at the Aurora Central Public Library located at 14949 East Alameda Drive, Aurora, Colorado.

Jack W. McGraw,

Acting Regional Administrator, U.S. EPA, Region VIII.

[FR Doc. 93–18844 Filed 8–5–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Petition Nos. P47–93 and P48–93]

Filing of Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; World Transport and Transitainer, Inc.

Notice is hereby given of the filing of petitions by World Transport and Transitainer, Inc., pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 9, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P47–93—Mr. Young Hee Ko, World Transport, 302 West Grand Avenue, Suite 5C, El Segundo, California 90245

P48–93—Mr. Thomas Bosselmann, Secretary, Transitainer, Inc., 1024 Del Amo Blvd., Carson, California 90746

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–18781 Filed 8–5–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Harold Copperman; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Harold Copperman, Omaha, Nebraska; to acquire an additional 1.29 percent of the voting shares of First Continental Financial, Inc., Omaha, Nebraska, for a total of 13.12 percent, and thereby indirectly acquire River City National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18811 Filed 8-5-93; 8:45 am]

BILLING CODE 6210-01-F

First Star Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 30, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. First Star Bancorp, Inc., Bethlehem, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Star Savings Bank, Bethlehem, Pennsylvania, which was previously known as Greater Bethlehem Savings and Loan Association.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of First Union Home Equity Bank, National Association, Charlotte, North Carolina, a *de novo* bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. American Chartered Bancorp II, Inc., Lake Zurich, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Chartered Bank of Lake Zurich, Lake Zurich, Illinois.

2. F & M Bancorporation, Inc., Kaukauna, Wisconsin, and F & M Merger Corporation, Kaukauna, Wisconsin; to merge with First National Financial Corporation, Oconto, Wisconsin, and thereby indirectly acquire First National Bank of Wisconsin, Oconto, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of City Bancorp, Inc., Murphysboro, Illinois, and thereby indirectly acquire The City National Bank of Murphysboro, Murphysboro, Illinois.

Board of Governors of the Federal Reserve System, July 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18812 Filed 8-5-93; 8:45 am]

BILLING CODE 6210-01-F

Huntington Bancshares Incorporated, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, Columbus, Ohio, and Huntington Bancshares Indiana, Inc., Columbus, Ohio; to acquire First Bancorp Indiana, Inc., Lafayette, Indiana, and thereby indirectly acquire First Bank of Lafayette, FSB, Lafayette, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty National Bancorp, Inc., Louisville, Kentucky; to acquire First Federal Savings Bank, Hopkinsville, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and in the sale, as agent, of credit related life and health insurance in connection with loans made by First Federal Savings Bank, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18813 Filed 8-5-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 361]

Research Program To Assess the Acceptability of Single Large Dose Animal Testing Programs To Determine the Carcinogenesis of Chemical Exposure in Humans

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to assess the acceptability of single large dose animal testing programs to determine the carcinogenesis of chemical exposure in humans. Toward this end, ATSDR encourages the identification and critical assessment of toxicological studies demonstrating single exposure carcinogenesis.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized in Sections 104(i)(5) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)(5) and (15)].

Eligible Applicants

Eligible applicants are the official state and local public health departments, state universities, state colleges and state research institutions of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

Availability of Funds

Approximately $50,000 is available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget and project period.

Purpose

The purpose of this award is to encourage the identification and critical assessment of toxicological studies demonstrating single exposure carcinogenesis and to critically analyze the associated biochemical mechanisms.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Identify and assess the completeness of the published toxicological studies for single exposure carcinogens and summarize the appropriate information to adequately describe the specifics of the study.

2. Develop a prototype integrative synthesis by class or chemical.

3. Analyze the relationship of the dose causing cancer to its large dose value in consideration of the additional factors of route of exposure, age/sex of the animals, chemical class and other significant factors.

4. Conduct a critical analysis of the biochemical mechanisms for single

exposure causation of cancer without exogenous promotion.

5. Communicate information in the above areas to all relevant communities including state and local governments and the public.

B. ATSDR Activities

1. Provide assistance in identifying and assessing the completeness of the published toxicological studies for single exposure carcinogens and summarize the appropriate information to adequately describe the specifics of the study.

2. Assist the recipient in developing a prototype integrative synthesis by class or chemical.

3. Provide assistance in analyzing the relationship of the dose causing cancer to its large dose value in consideration of the additional factors of route of exposure, age/sex of the animals, chemical class and other significant factors.

4. Assist recipient in the identification and evaluation of the biochemical mechanisms as the basis for explaining the test results.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Application

a. *Proposed Program* 40%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results.

b. *Program Personnel* 40%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership and (b) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

c. *Applicant Capability* 20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. *Program Budget*—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to the Intergovernmental review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. *Technical Review*

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13).

B. *Cost Recovery*

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. *Animal Welfare*

If the proposal project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care on Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadline

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 7, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on applications procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Jim Holler, Ph.D., Quality Assurance Branch, Agency for Toxic Substances and Disease Registry, Mailstop E–33, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6308.

Please Refer to Announcement Number 361 when Requesting Information and Submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–18923 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–70–P

[Program Announcement Number 360]

Research Program To Assess the Utility of Genetic Toxicology Screens as Predictors of Long-Term Health Consequences

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement for a research program to assess the usefulness of genetic toxicology screens as predictors of long-term health consequences such as cancer and reproductive toxicity resulting from exposure to hazardous substance releases at CERCLA sites. Toward this end, ATSDR encourages genotoxicity methods development and/or testing for methyl tertiary butyl ether (MTBE), a gasoline additive with unknown potential to cause cumulative effects following long-term exposure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Surveillance and Data Systems, and Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This project is authorized under Sections 104(i) (5) and (15) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i) (5) and (15)].

Eligible Applicants

Eligible applicants are the official public health agencies of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Island, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal government. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $75,000 is available in FY 1993 to fund one cooperative agreement. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget and project period.

Purpose

The purpose of this research program is to assess the usefulness of genetic toxicology screens as predictors of long-term health consequences such as cancer and reproductive toxicity resulting from exposure to hazardous substance releases at CERCLA sites. Toward this end, ATSDR encourages genotoxicity methods development and/or testing for MTBE to enhance the public's knowledge of the potential health effects associated with exposure to this substance.

Program Requirements

ATSDR will provide financial assistance to recipients in developing methods and technologies to explore the relationship between exposure to hazardous substances and adverse health conditions.

In conducting activities to achieve the objectives of this program, the recipient will be responsible for the activities listed under A., below, and ATSDR will be responsible for conducting activities listed under B., below:

A. Recipient Activities

1. Assess the usefulness of genetic toxicology screens as predictors of long-term health consequences of MTBE.

2. Identify information related to research activities associated with MTBE.

3. Develop genotoxicity methods and/or testing for MTBE.

4. Publish findings resulting from research activities associated with this research program.

5. Communicate information in the above areas to all relevant communities including state and local governments and the public.

B. ATSDR Activities

1. Assist recipient in assessing the usefulness of genetic toxicology screens as predictors of long-term health consequences of MTBE.

2. Assist recipient with identifying information related to research activities associated with MTBE.

3. Provide consultative, administrative and technical assistance, as needed, to assist the recipient with genotoxicity methods development and/or testing for MTBE.

4. Assist the recipient on development and implementation efforts related to the publication of findings resulting from research activities associated with this research program.

5. Assist in communicating advances in the above areas to all relevant communities including other Federal agencies, state and local governments and the public.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. *Scientific and Technical Review Criteria of New Application*

a. *Proposed Program*—50%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results that meet the program objective as described in the Purpose section of this announcement; (c) the proposed project schedule, including clearly established and attainable project objectives for which progress toward attainment can and will be measured; and (d) the specific study objectives and scientific hypothesis.

b. *Program Personnel*—30%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

c. *Applicant Capability*—20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. *Program Budget*—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Reviw

Applications submitted under this announcement are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13) as amended by SARA.

B. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to an initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Animal Welfare

If the proposal project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care on Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

E. Cost Recovery

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

F. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

(1) State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity;

(2) State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes;

(3) State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work; and

(4) State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 7, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 360 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, for business mangement technical information. Programmatic technical assistance may be obtained from Mike Youson, Office of the Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, (404) 639–6306.

Please Refer To Announcement Number 360 When Requesting Information and Submitting an Application.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1993.

Walter Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–18922 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–70–P

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 Federal Register 35247, dated September 6, 1984) is amended to include the following blanket delegation of authority from the Secretary to the Administrator, HCFA, to conduct studies and demonstration projects related to the Medicare and Medicaid programs. Also, Part F. is amended to include a general reservation of authority to indicate that the Secretary may exercise or otherwise delegate the authority to conduct studies and demonstration projects under titles XI, XVIII, and XIX of the Social Security Act as required

The specific amendments to Part F. are described below:

- Section F.30., Delegations of Authority, is amended by adding the following paragraph RR:

RR. The authority vested in the Secretary or that may become vested in the Secretary, and not otherwise delegated, limited, or reserved, to conduct studies and demonstration projects, as directed by Congress, that relate to programs established by title XI of the Social Security Act (the Act), insofar as they relate to the mission of the Health Care Financing Administration (HCFA), and titles XVIII and XIX of the Act. This delegation encompasses the authority to approve related program activities required by the studies and demonstration projects if such authority is or becomes vested in the Secretary and is not otherwise delegated, limited, or reserved. These activities include, but are not limited to, direct performance, entering into contracts or cooperative agreements, making grants, approving payments for contracts, cooperative agreements, and grants, and approving authorized waivers of compliance with certain requirements of titles XI, XVIII and XIX of the Act when such actions are for the purpose of conducting studies and demonstration projects.

- Section F.40.3., General Reservations, is amended by deleting the existing paragraph c. and replacing it with the following paragraph c:

c. Nothing in sections F.30., F.40., F.50. (except 1.b. and 2.a.), or F.60. shall be construed as limiting the Secretary's right to exercise the authorities otherwise delegated or to revise a delegation of authority.

Dated: July 28, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 93–18824 Filed 8–5–93; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Final Review Criteria and Funding Priority for Grants for Nurse Anesthetist Traineeships for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final review criteria and funding priority for fiscal year (FY) 1993 Grants for Nurse Anesthetist Traineeships under the authority of section 831(a), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Pubic Law 102–408, dated October 13, 1992.

This program was announced in the Federal Register at 58 FR 21985 on April 26, 1993. The announcement included proposed review criteria and a proposed funding priority. A comment period of 30 days was established to allow public comment concerning the proposed review criteria and proposed funding priority. One comment was received. This notice includes a discussion of the comment received and the final review criteria and the final funding priority for Grants for Nurse Anesthetist Traineeships for Fiscal Year 1993. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

Purpose

Section 831(a) of the Public Health Service Act authorizes the Secretary to award grants to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists. To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart F.

Eligibility

Eligible applicants for Grants for Nurse Anesthetist Traineeships are public or private nonprofit institutions.

The applicant must agree that, in providing traineeships, the institution will give preference to individuals who are residents of health professional shortage areas designated under section 332. The applicant must also agree that traineeships provided with the grant will pay all or part of the costs of (A) the tuition, books, and fees of the program of nursing with respect to which the traineeship is provided; and (B) reasonable living expenses of the individual during the period for which the traineeship is provided.

Final Review Criteria

The comment received on the proposed notice suggested that the review criterion related to clinical experiences in medically underserved communities should be eliminated because "extensive experience in such settings would not afford the student the opportunity to meet the Council on Accreditation's clinical requirements for graduation." The respondent also suggested that the two review criteria related to cultural diversity and competence and special needs of minority populations should be eliminated because "the plan of anesthesia delivery is not dictated by cultural/minority characteristics but by health history and physical examination findings."

Pubic Law 103–43 amends section 860(d) of the PHS act so that this program is no longer subject to peer review by individuals who are not officers or employees of the Federal Government. Therefore, the review criteria are being deleted. However, the intent of the legislation and the Department is to enhance health services to the underserved, including individuals from diverse cultures, and to increase the number of health professionals working in or serving medically underserved communities.

The review of applications will take into consideration the following criteria:

1. Program information including total full-time enrollment, and full-time enrollment beyond the first 12 months

of the program; and information on other financial aid available to students.

2. Qualifications of the Program Director.

Other Considerations

In addition, funding factors may be applied in determining funding of approved applications. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preferences

In making awards of grants under this section, preference will be given to any qualified applicant that—(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 9570, dated February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Preference will also be given to qualified applicants carrying out traineeship programs whose participants gain significant experience in providing health services at rural health facilities.

Final Funding Priority

It was proposed that a funding priority be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority or low-income populations identified as at-risk of poor health outcomes. The comment received objected to including low-income populations in this priority because, "The average income for registered nurses prevents applicants from qualifying for this funding priority." This language does not hinder applicants for this program since applicants can qualify for this priority by enrolling and graduating students from minority populations. However, since nurse anesthetist students are registered nurses whose income would be higher than the low-income figures, we agree that low-income populations be deleted from this priority. The final funding priority is as follows.

A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

Additional Information

If additional programmatic information is needed, please contact: Ms. Anastasia Buchanan, Chief, Nursing Practice Resources Section, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586

This program, Grants for Nurse Anesthetist Traineeships, is listed at 93.124 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 1, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–18829 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A, National Cancer Institute, National Institutes of Health, on August 27, 1993, at the Executive Plaza North Building, Conference room J, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the pubic from 8:30 to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on August 27 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer control.)

Dated: August 2, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–18875 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and

evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: September 9–10, 1993.

Place of Meeting: National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 9, 9 a.m. until 1:30 p.m.

Closed: September 9, 1:30 p.m. until 3 p.m.

Open: September 9, 3 p.m. until recess.

Closed: September 10, 8 a.m. until 10 a.m.

Open: September 10, 10 a.m. until adjournment.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of meeting and a roster of the members upon request. Dr. Louise Ramm, Executive Secretary, NCRR, Westwood Building, room 854, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7906, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: August 2, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–18874 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 13–14, 1993, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 13, from 8:30 a.m. to 12 noon and again on September 14, from 10 a.m. to 12 p.m. to discuss administrative details relating to Council business and special reports. Subcommittee meetings will be open to the public September 13 from 1 p.m. to 2 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 13, from 2 p.m. to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 14, from 8:30 a.m. to 10 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 594–7527, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 2, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–18873 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Modified Adeno-Associated Virus Vector Capable of Expression From a Novel Promoter

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/891,962, entitled "Modified Adeno-Associated Virus Vector Capable Of Expression From A Novel Promoter" and related foreign patent applications to Targeted Genetics Corporation of Seattle, WA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of viral vector-based gene therapy for the treatment of cystic fibrosis. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes the construction of a modified adeno-associated virus (AAV) vector capable of carrying a large coding region such as the cystic fibrosis gene and expressing such a foreign DNA sequence using a novel transcription promoter.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: July 29, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–18876 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine

Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on September 10, 1993, in the Board Room of the National Library of Medicine, Building 38A, room B1N30B, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will open to the public from 9 a.m. to 3 p.m. for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 10, from approximately 3 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, with furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 2, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–18872 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

Opportunity For Licensing: Anti-viral Agent (F-ddA) Useful In The Treatment Of AIDS

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks a licensee who can effectively pursue the preclinical, clinical and commercial development of 9–(2, 3 dideoxy-2-fluoro-b-D-threopentofuranosyl) adenine (F-ddA) as a drug for the treatment of human immunodeficiency virus (HIV) infection. Scientists at the National Cancer Institute (NCI) have established that this compound is effective in inhibiting *in vitro* growth of HIV, the etiologic agent of Acquired Immunodeficiency Syndrome (AIDS). NIH intends to grant the selected company an exclusive world-wide royalty-bearing license to practice the invention embodied in U.S. Patent Application SN 07/762,082 (FWC of 07/288,652, CIP of 07/039, 402) entitled "Acid Stable Purine Dideoxynucleosides Active Against The Cytopathic Effects Of Human Immunodeficiency Virus" and U.S. Patent Application SN 07/556,713 entitled "2'-Fluorofuranosyl Derivatives And Novel Method Of Preparing 2'-Fluoropyrimidine and 2'-Fluoropurines" for this field of use. The patent rights in these inventions have been assigned to the United States of America.

SUPPLEMENTARY INFORMATION: The NIH seeks a licensee, who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), has the most meritorious plan for the development of F-dda to a marketable status to meet the needs of the public and with the best terms for the NIH. Specifically, companies are sought who directly or indirectly, will be able to:

(1) Synthesize bulk pharmaceutical product necessary for the treatment of 500–1, 500 patients with HIV infection in Phase I, II and III developmental studies;

(2) Carry out preclinical toxicology and pharmacology studies and testing, without guaranteed assistance from the government, to complement preclinical toxicology and pharmacology currently being performed to the Investigational New Drug (IND) stage by NCI.

(3) Perform formulation for oral and intravenous use, vialing, quality control testing, bioavailability testing and distribution of the drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the NIH intramural program and in the extramural AIDS Clinical Trials Groups (ACTGs) established by the National Institute of Allergy and Infectious Diseases (NIAID). The clinical trials may be performed under the sponsorship of an IND to be held by NCI or NIAID. Prior to being released for commercial distribution, the drug will have to be granted a product license by the Food and Drug Administration (FDA);

(4) Perform clinical studies. NCI may conduct studies of F-ddA in the ACTGs, the NIH Clinical Center and NIAID may conduct studies, and the company will be expected to provide the drug free of charge to NIH for studies conducted in the ACTGs and in the NIH intramural program; the company will be expected to cooperate with NCI and NIAID in providing the drug and supporting distribution of the drug under a treatment IND when appropriate;

(5) Provide data management support for both the intramural NIH and extramural studies of F-ddA necessary for the timely submission of a NDA to the FDA;

(6) Share the cost with NIH of intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of F-ddA for the treatment of AIDS;

(7) Agree to abide by the standard NIH requirement that exclusive licenses that may be required to submit documentation in confidence showing a reasonable relationship between the pricing of a licensed product, the public investment in that product, and the health and safety needs of the public.

The criteria that NIH will use to choose the exclusive licensee will, in addition to those set forth by 37 CFR 404.7(a)(1)(ii)–(iv), include:

(1) Manufacturing capabilities in nucleoside analogs and a plan for production of F-ddA;

(2) Experience in preclinical and clinical drug development with special emphasis on the development of antiviral compounds;

(3) Experience in the evaluation, monitoring and interpretation of data for investigational biologic and virologic assays under an IND;

(4) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies for an IND;

(5) Demonstrated expertise in monitoring drug levels using state-of-the-art methods for measuring drugs in blood, urine and CSF;

(6) A willingness to cooperate with NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials and tests of investigational biologic assays;

(7) Demonstrated competence in developing oral formulation and sustained-release oral formulations;

(8) Ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price;

(9) Willingness to sustain the cost of F-ddA drug development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

(10) Agreement to be bound by DHHS regulations and guidelines involving human and animal subjects;

(11) An aggressive developmental plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

DATES: In view of the high priority for developing new drugs for the treatment of HIV infection, all proposals must be received on or before November 4, 1993.

ADDRESSES: Requests for a summary of F-ddA's anti-HIV activity, its pharmacological properties and toxicological information, or other questions and comments concerning the clinical aspects of this technology should be directed to: Dr. Wyndham Wilson, Special Assistant to the Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, 9000 Rockville Pike, Bethesda, MD 20892. Telephone: (301) 496–6404.

Requests for a copy of the patent applications, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: July 29, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–18877 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 30, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. HRSA Competing Training Grant Application: General Instructions and Supplements—0915–0060—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. This revision adds statutory reporting requirements authorized under Public Law 102–408. *Respondents*: Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Previously Approved Reporting Burden	3,177	1.03	57
Previously Approved Recordkeeping	17	1	10
New Reporting Burden Request	1,364	1	105

Estimated Total Annual Burden.....328,951 hours

2. Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS)—Regulatory Requirements and Application Form—0915–0028—*Respondents:* Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
EFN & FADHPS Application	200	1	.33
Documentation of Cost of Attendance (57.2804(b) & 57.2904(b)(1)(ii))	200	1	.17
Records Requirements (57.2809(b) & 57.2909(b))	200	1	.17

Estimated Total Annual Burden.....134 hours

3. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody—New—This request for the Office of Management and Budget's review and approval is to perform surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners. Respondents: Individuals or households; Number of Respondents: 1,025; Number of Responses Per Respondent: 1; Average Burden Per Response: .243 hours; Estimated Annual Burden: 249 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, *Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.*

Dated: August 2, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–18786 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 18, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Application for Wife's or Husband's Insurance Benefits— 0960–0008. The information on form SSA–2 is used by the Social Security Administration to determine an applicant's eligibility to benefits. The affected public consists of individuals who file for wife's or husband's benefits.
   Number of Respondents: 700,000
   Frequency of Response: 1
   Average Burden Per Response: 10 minutes
   Estimated Annual Burden: 116,667 hours
2. Application for Parent's Insurance Benefits—0960–0012. The information on form SSA–7 is used by the Social Security Administration to determine the entitlement of an individual to parent's insurance benefits. The respondents are parents of a deceased worker who apply for benefits.
   Number of Respondents: 1,400
   Frequency of Response: 1
   Average Burden Per Response: 15 minutes
   Estimated Annual Burden: 350 hours
3. Application for Widow's or Widower's Insurance Benefits—0960–0004. The information on form SSA–10 is used by the Social Security Administration to make a determination of entitlement to widow's or widower's benefits. The respondents are widows or widowers who file claims for entitlement to benefits.
   Number of Respondents: 640,000
   Frequency of Response: 1
   Average Burden Per Response: 15 minutes
   Estimated Annual Burden: 160,000 hours
4. SSI Prerelease Survey Questionnaire—0960–NEW. The information on form SSA–41 will be used by the Social Security Administration to evaluate the effectiveness of its prerelease procedure. The respondents will be private and public institutions which have individuals in custody who file for Supplemental Security Income payments prior to release.
   Number of Respondents: 200
   Frequency of Response: 1
   Average Burden Per Response: 15 minutes
   Estimated Annual Burden: 50 hours
5. 800 Number Afterhours Caller Survey—0960–NEW. The information on form SSA–88 will be used by the Social Security Administration to help determine the efficiency of its 800 number service. The respondents will be selected people who call the 800 number between 7 p.m. and 7 a.m. or on weekends or holidays.
   Number of Respondents: 1,200
   Frequency of Response: 1
   Average Burden Per Response: 10 minutes
   Estimated Annual Burden: 200 hours
6. State Vocational Rehabilitation Agency Claim—0960–0310. The information on form SSA–199 is used by the Social Security Administration (SSA) to allow or deny claims for reimbursement filed by State Vocational Rehabilitation (VR) agencies. The respondents are such VR agencies which file claims with SSA for reimbursement.
   Number of Respondents: 82
   Frequency of Response: 135
   Average Burden Per Response: 8 minutes
   Estimated Annual Burden: 1,476 hours
7. Request for Overpayment Recovery or Change in Repayment Rate—0960–0037. The information on form SSA–632 is used by the Social Security Administration to determine if an overpaid amount can be waived or to determine how recovery will be made.
   Number of Respondents: 500,000
   Frequency of Response: 1
   Average Burden Per Response: 25 minutes
   Estimated Annual Burden: 208,333 hours
8. Service Delivery Questionnaires—0960–NEW. The information on forms SSA–3299, SSA–4000, SSA–4298 and SSA–4299 will be used by the Social Security Administration to measure the quality of service provided by its field offices. The respondents will be selected individuals who: Are entitled to title II or title XVI benefits; were denied under either title; or applied for Social Security numbers.
   Number of Respondents: 11,000
   Frequency of Response: 1
   Average Burden Per Response: 17.7 minutes
   Estimated Annual Burden: 3,250 hours
9. Application for Supplemental Security Income—0960–0444. The information on form SSA–8001 is used by the Social Security Administration to make a determination of eligibility for Supplemental Security Income payments (SSI). This form is used when only an abbreviated application is necessary. The respondents are applicants for SSI payments who wish formal non-disability determinations on their applications.
   Number of Respondents: 1,560,000
   Frequency of Response: 1
   Average Burden Per Response: 15 minutes
   Estimated Annual Burden: 390,000 hours
10. Statement of Income and Resources—0960–0124. The information on form SSA–8010 is used by the Social Security Administration to determine the eligibility of certain individuals for Supplemental Security Income (SSI) payments. The respondents are sponsors, ineligible children, and parents and spouses living in the same household of an SSI recipient or applicant.
    Number of Respondents: 450,000
    Frequency of Response: 1
    Average Burden Per Response: 25 minutes
    Estimated Annual Burden: 187,500 hours
11. Supplemental Security Income—Quality Review Case Analysis—0960–0133. The information on form SSA–8508 is used by the Social Security Administration to provide an ongoing assessment of the Supplemental Security Income (SSI) program, SSI policies and procedures, and the effect of incorrect payments. The respondents are SSI recipients who are selected for this analysis.
    Number of Respondents: 18,000
    Frequency of Response: 1
    Average Burden Per Response: 60 minutes
    Estimated Annual Burden: 18,000 hours
12. Permanent Residence in the United States—0960–0451. The information on final regulation F–20–416P is used by the Social Security Administration to establish that aliens meet certain residency requirements before being entitled

to Supplemental Security Income (SSI) payments. The affected public consists of aliens who file for SSI.

Number of Respondents: 234,800
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 19,567
OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Date: July 30, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–18627 Filed 8–5–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–43]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF-MIIR, Washington, DC 20332–5000; (202) 767–6235; *Dept. of Veterans Affairs:* Michael Reynolds, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave., NW, Washington, DC 20420; (202) 233–5026; (These are not toll-free numbers).

Dated: July 30, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 8/06/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083-
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure

California

Bldgs. 604, 605, 612, 611, 613-618
Point Arena Air Force Station Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010237-189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use - housing.

Bldg. 20 - VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.

Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: portion of 66,165 sq.ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dedeco Co: Guam GU 96912-
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use - radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion)(AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use - medical administration, veterinary services.

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use - trash house, access restrictions.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use - storage, pigeon infested

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Bldg. 00106, Fort Dodge
Ft. Dodge Co: Webster IA 50501-
Landholding Agency: Air Force
Property Number: 189310051
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use - storage

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111-
Location: 7 miles south of Bossier City on highway 71 south; left 1 1/4 miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maine

31 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: Air Force
Property Number: 189310052
Status: Excess
Comment: 2916-7097 sq. ft., 1-2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2-D-ME-526G

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use - communications transmitter building.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use - visiting personnel housing.

Bldgs. 51-62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010791-189010802
Status: Excess
Comment: 1134 sq. ft. each; 1 story wood frame residence with garage; possible asbestos.

Bldgs. 63-67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010803-189010807
Status: Excess
Comment: 1306 sq. ft. each; 1 story wood frame residence with garage; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use - youth center.

Bldgs. 72-89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010811-189010828
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldgs. 97-98
Calumet Air Force Station
Calumet Co: Keneenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010829-189010830
Status: Excess
Comment: 171 and 114 sq. ft.; 1 floor; potential utilities; most recent use - pump house.

Bldg. 10
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldgs. 216-224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force
Property Number: 189010847-189010855, 189010859, 189010861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garage.

Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldgs. 23-24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010865-189010866
Status: Excess
Comment: 44 sq. ft. each; 1 story; metal frame; prior use - storage of fire hoses.

Bldgs. 36, 37, 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010872-189010873, 189010879
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use - storage of fire hoses.

Pennsylvania

Bldg. 25 - VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215-
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604-
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660-
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083-
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535-5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use - location for instrument landing systems equipment.

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121-
Landholding Agency: VA
Property Number: 979240001
Status: Underutilized
Comment: 4 acres; landslide area.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912-
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912-
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Louisiana

Land -- 8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301-
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use - recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052-
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use - dump site for leaves.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711-
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use - parking lot.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660-
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402-
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq ft., 2 story concrete, most recent use-radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110010
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Florida

Bldg. 24, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA

Property Number: 979230008
Status: Underutilized
Comment: portion of 6150 sq. ft., 3 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 36, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - administrative facility

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use - maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use - administrative facility.

Bldgs. 41, 43, 44, 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010781, 189010783-189010784, 189010789
Status: Excess
Comment: 1944 - 7216 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - dining hall.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use - administrative facility.

Bldgs. 47, 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010787-189010788
Status: Excess
Comment: 83 - 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use - storage.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010790.
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use - Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use - commissary facility.

Bldgs. 9, 11-13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010835, 189010837-189010839
Status: Excess
Comment: 1056 sq. ft. each; 1 story wood frame residence.

Bldgs. 5-8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010840-189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residence; possible asbestos

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use - heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - office.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use - electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use - gymnasium facility.

12 Bldgs.
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force
Property Number: 189010867-189010871, 189010874, 189010880- 189010885
Status: Excess
Comment: 25 - 36 sq. ft.; 1 story; metal frame; prior use - storage of fire hoses.

Bldgs. 153, 154, 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010886-189010888
Status: Excess
Comment: 3744 - 8960 sq. ft.; concrete block facility; (radar tower bldg.) potential use - storage.

Minnesota

Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441-7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use - office/storage.

Bldg. 227
Va Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125-4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Nebraska

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Comment: 19370 sq. ft., brick frame, 1-story, possible asbestos, most recent use - recreation

33 Bldgs.
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320060-189320092
Status: Excess
Comment: 2012 - 4984 sq. ft., 2-story plus partial or full basement wood frame family housing, possible asbestos

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Comment: 280 - 708 sq. ft., wood frame, accommodates 1 to 3 vehicles, possible asbestos

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Comment: 2225 sq. ft., 1-story wood frame, most recent use - offices, needs rehab, possible asbestos

5 Bldgs.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320095-189320099
Status: Excess
Comment: various sq. ft., 1-story, most recent use - storage, possible asbestos

New Hampshire

Bldgs. 114-115
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320055-189320056
Status: Excess
Comment: 2606 sq. ft. each, 1-story, concrete block frame, possible asbestos, access restrictions, most recent use - storage

Bldg. 127
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use - storage

New York

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia Co: Genesee NY 14020-
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Bldgs. 144, 143, 142/146 VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425-
Landholding Agency: VA
Property Number: 979210004-979210006
Status: Unutilized
Comment: 5215 sq. ft. each, 2 story wood frame residence, needs rehab, potential utilities

Pennsylvania

Bldg. 3 - VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240-
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2765 sq. ft., two story brick residence, needs rehab

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: portion of 16,360 sq. ft. 3-story structure, most recent use - storage.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use - storage.

Bldg. 27, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230013
Status: Underutilized
Comment: Second floor of bldg. (3,410 sq. ft.)

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: portion of 1215 sq. ft. 2-story stone farm house, needs repair.

Texas

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use - storage; possible asbestos; needs rehab.

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use - auto hobby shop; needs rehab.

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use - supply store; needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use - recreation, workshop.

Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use - arts and crafts center.

Wyoming

Bldg. 13

Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use - reservoir house, use for storage purposes.

Land (by State)

California

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652-5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use - recreational area; portion subject to easements.

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Florida

Buffer Zone, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230016
Status: Underutilized
Comment: approx. 20 acres, storm water retention area

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: approx. 7 acres, storage compound, partially wooded

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064-
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6-8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016-
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417-
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use - parking, potential utilities.

Bldg. 227-229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417-
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use - parking, potential utilities.

Land - 12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417-
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424-
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001-
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206-
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Suitable/To Be Excessed

Buildings (by State)

Nevada

47 Bldgs.
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120001-189120047
Status: Unutilized
Comment: 1170 - 2750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 Sq. ft., one story, most recent use-maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 Sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 Sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 Sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off-site removal only.

13 Bldgs.
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120052, 189120054-189120065

Status: Unutilized
Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

9 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095-189110103
Status: Excess
Comment: 768 - 988 sq. ft.; 2 to 3 bedroom single family housing unit; needs rehab; off-site use only.

36 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110104-189110121, 189110127-189110144
Status: Excess
Comment: 1203 - 2295 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

14 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110122-189110126, 189110145-189110153
Status: Excess
Comment: 364 - 672 sq. ft.; 1 and 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 1
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310066
Status: Excess
Comment: 10859 sq. ft., 1-story concrete, needs extensive repairs, presence of asbestos

38 Bldgs.
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310067-189310092, 189310094-189310105
Status: Excess
Comment: 62 - 5806 sq. ft., 1 or 2 story concrete block, wood frame or metal, needs extensive repairs, presence of asbestos

Bldg. 35
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310093
Status: Excess
Comment: 14520 sq. ft., 5-story concrete block, needs extensive repairs, presence of asbestos

Bldgs. 41-49, 51, 61, 62
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310106
Status: Excess
Comment: 36-40 sq. ft., wood frame, no utilities, need extensive repairs, presence of asbestos, most recent use - fire hose storage

Land (by State)

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL -
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55 acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Minnesota

Land around Bldg. 240-249,253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Unsuitable Properties

Buildings (by State)

Alabama

84 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189010002-189010005, 189030220-189030223, 189110165-189110167, 189120231-189120232, 189130335-189130336, 189130369-189130381, 189140010-189140014, 189220005-189220014, 189240013-189240019, 189310042-189310050, 189320044-189320047, 189330045-189330065
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

22 Bldgs.
Gunter AFB
Montgomery Co: Montgomery AL 36114-
Landholding Agency: Air Force
Property Number: 189010011-189010013, 189010015-189010016, 189010019-189010020, 189010022, 189040853-189040855, 189130349, 189140001-189140009, 189140021
Status: Unutilized
Reason: Secured Area

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldgs. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010298-189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldgs. 11-230, 21-116, 43-010, 63-320, 63-325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010303-189010304, 189010306-189010308
Status: Unutilized
Reason: Secured Area, Contamination

Bldgs. 103, 110, 112-115, 118, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010309-189010315, 189010317-189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldgs. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010320-189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldgs. 103-105, 110, 114, 202, 204-205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010330-189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Isolated area, Arctic environment, Not accessible by road

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518-
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldgs. 392, 1182, 152, 159, 384 60 ABG/DE
Travis Air Force Base
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010187-189010192
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 707, 575, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010193-189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 100-101, 116, 202
Point Arena Air Force Station
Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010233-189010236
Status: Unutilized
Reason: Secured Area

118 Bldgs.
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546-189010549, 189010561-189010563, 189010567-189010569, 189010571-189010574, 189010579-189010580, 189130360, 189130362, 189140029, 189210011-189210019, 189210024- 189210029, 189230007-189230013, 189230019-189230020, 189240044, 189240048-189240050, 189310012-189310019, 189310024-189310025, 189310027-189310030, 189310032-189310041, 189320009-189320031, 189330011-189330034
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material and some are extensively deteriorated)

Colorado

House on Tract 107
Falcon Air Force Base
Co: El Paso CO 80912
Landholding Agency: Air Force
Property Number: 189320008
Status: Unutilized
Reason: Secured Area

Bldgs. 712, 518, 505, 504, 503, 502, 32, 27, 23
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011-9599
Landholding Agency: Air Force
Property Number: 189330002-189330010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Delaware

Bldgs. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902-5516
Landholding Agency: Air Force
Property Number: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Florida

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403-5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area

Bldgs. 400, 430
Patrick Air Force Base
Cocoa Beach Co: Brevard FL 32925-
Landholding Agency: Air Force
Property Number: 189220001-189220002
Status: Unutilized
Reason: Secured Area

Bldgs. 1176, 1179, 659, 321, 510
Patrick Air Force Base Co: Brevard FL 32935-
Landholding Agency: Air Force
Property Number: 189240029-189240031, 189320001-189320002
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

Bldgs. 558, 575
Patrick Air Force Base Co: Brevard FL 32925-
Landholding Agency: Air Force
Property Number: 189320003-189320004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Extensive deterioration

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608-
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Extensive deterioration

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189030004-189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225-5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldgs. 3670, 503, 869, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225-5001
Landholding Agency: Air Force
Property Number: 189010248, 189010725, 189110087, 189130347
Status: Unutilized
Reason: Secured Area

Indiana

Bldgs. 21, 22, 62 VA Medical Center
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230001-979230003
Status: Underutilized
Reason: Extensive deterioration

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310008
Status: Unutilized
Reason: Secured Area

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station

Louisiana

Bldg. 3477

Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110-5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area

Maryland

Bldgs. 4-5, 3427
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613-
Landholding Agency: Air Force
Property Number: 189010261, 189010264, 189140016
Status: Unutilized
Reason: Secured Area

Massachusetts

Bldgs. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022-
Landholding Agency: Air Force
Property Number: 189010438, 189040002
Status: Unutilized
Reason: Secured Area

Michigan

12 Bldgs.
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045-
Landholding Agency: Air Force
Property Number: 189010522-189010533
Status: Unutilized
Reason: Secured Area

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: sewage treatment and disposal facility.

Bldgs. 99-100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010831-189010832
Status: Excess
Reason: water well

Bldgs. 118, 120, 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010875-189010876, 189010878
Status: Excess
Reason: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Pump lift station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Water pump station

Minnesota

Bldgs. 641, 643, 646, 665
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111-4098
Landholding Agency: Air Force
Property Number: 189310003-189310006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Missouri

Bldgs. 42, 45-47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125-
Landholding Agency: Air Force
Property Number: 189010726, 189010728-189010731
Status: Unutilized
Reason: Secured Area

Montana

8 Bldgs.
Malmstrom AFB
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Number: 189010076-189010080, 189010722-189010723, 189040057
Status: Unutilized
Reason: Secured Area, Other environmental (Some are within 2000 ft. of flammable or explosive material)

Nebraska

Offutt Communications Annex-t3
Offutt Air Force Base
Scribner Co: Dodge NE 68031-
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: former sewage lagoon

Bldgs. 637, 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524-
Landholding Agency: Air Force
Property Number: 189230021-189230022
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 31, 311, 401, 416, 417, 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113-
Landholding Agency: Air Force
Property Number: 189240007-189240012
Status: Unutilized
Reason: Secured Area

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Generator

New Hampshire

Bldgs. 101, 102, 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320005-189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

12 Bldgs.
Holloman Air Force Base
Holloman AFB Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189130333, 189240032-189240042
Status: Unutilized
Reason: Secured Area

Bldgs. 874, 1258
Holloman Air Force Base Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189320041-189320042
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303-5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

14 Bldgs.
Griffiss Air Force Base
Rome Co: Oneida NY 13441-
Landholding Agency: Air Force
Property Number: 189140022-189140023, 189230001-189230003, 189240020-189240028
Status: Excess
Reason: Secured Area (Some are within airport runway clear zone)

Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211-7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308-5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area

Bldg. 4230 - Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531-5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area

Bldgs. 600, 602-607, 612, 619, 6606
Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2890
Landholding Agency: Air Force
Property Number: 189330035-189330044
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805-

Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Friable asbestos.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705-
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: garbage incinerator

7 Bldgs.
Minot Air Force Base
Minot Co: Ward ND 58701-
Landholding Agency: Air Force
Property Number: 189320034-189320040
Status: Unutilized
Reason: Secured Area

Ohio

Bldgs. 404-405
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473-5000
Landholding Agency: Air Force
Property Number: 189220015-189220016
Status: Unutilized
Reason: Secured Area

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705-5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759-
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area

South Dakota

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706-
Landholding Agency: Air Force
Property Number: 189210001-189210002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 200-206 South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189320048-189320053
Status: Unutilized
Reason: Extensive Deterioration

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604-
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843-5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. 645, 02106
Reese Air Force Base
Lubbock Co: Lubbock TX 79489-
Landholding Agency: Air Force
Property Number: 189010210, 189210005
Status: Excess
Reason: Secured Area

Bldgs. 24-26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 979010050-979010052
Status: Unutilized
Reason: Friable asbestos

Utah

Bldg. 789
Hill Air Force Base
Co: Davis UT 84056-
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Washington

34 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189010139-189010159, 189310053-189310065
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204-
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022-
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area

Wisconsin

Bldgs. 204, 306 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207-6299
Landholding Agency: Air Force
Property Number: 189320032-189320033
Status: Unutilized
Reason: Secured Area

Wyoming

12 Bldgs.
Warren Air Force Base
Cheyenne Co: Laramie WY 82005-
Landholding Agency: Air Force
Property Number: 189010198-189010203, 189240001-189240006
Status: Unutilized
Reason: Secured Area

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Chlorination chamber for sewage disposal plant.

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Isolated area, Arctic environment, Not accessible by road

Lake Louise Recreation
21 CSG-DEER
Elmendorf AFB Co: Anchorage AK 99506-5000

Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Isolated area, Arctic coast, Not accessible by road

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Isolated area, Arctic coast, Not accessible by road

California

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550-
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: 750,000 gallon water reservoir.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608-
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Inaccessible

Louisiana

Land -- 3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301-
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613-
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303-
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area

New York

Tracts 1, 4
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011, 979010014
Status: Unutilized
Reason: Secured Area

Tracts 2, 3
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012-979010013
Status: Underutilized
Reason: Secured Area

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1 1/2 miles south of Highway 44 Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451-
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011-
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area

[Doc. 93-18792 Filed 8-5-93; 8:45 am]

BILLING CODE 4210-29-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-03-4320-04]

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

DATES: September 10, 1993, 9 a.m. until 4 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82902-1869.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introductions and opening remarks
2. Election of a Chairman and Vice-Chairman
3. Green River Resource Area Resource Management Plan
4. Big Sandy River Project
5. Improvements proposed for completion in FY94 with range betterment (8100) funds
6. Update on wild horse gathering
7. Update on District wildlife program
8. Update on Cumberland/Uinta Allotment
9. Public comment period

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:30 and 3 p.m., or file written statements for the Board's consideration.

Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management,

Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, by September 9, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

District Manager.

[FR Doc. 93–18788 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–22–M

[AZ–920–03–4210–08; AZA 22922 et al.]

Arizona; Conveyance of Federal Mineral Interest Applications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: Notice is hereby given that pursuant section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), the following applications have been filed for the conveyance of certain Federally-owned mineral interests within each accompanying land description:

Gila and Salt River Meridian, Arizona

AZA–22922

T. 10 S., R. 14 E.,
Secs. 12 and 13.
T. 10 S., R. 15 E.,
Secs. 5 and 7.

AZA–23415

T. 20 S., R. 9 E.,
Sec. 25.
T. 20 S., R. 10 E.,
Secs. 13, 14, 15, 23, 24, 28, 29, 30, 32, and 36.

AZA–23870 *

T. 11 N., R. 24 E.
Secs. 8, 10, 12, 14, and 22.
T. 12 N., R. 24 E.,
Secs. 30.

AZA–24062

T. 19 S., R. 14 E.,
Secs. 27 and 28.

AZA–24090

T. 19 S., R. 14 E.,
Secs. 21 and 22.

AZA–24709

T. 8 N., R. 1 W.,
Secs. 6, 20, 21, and 22.
T. 8 N., R. 2 W.,
Secs. 10 and 15.
T. 9 N., R. 2 W.,
Secs. 23, 24, 25, and 26.

AZA–25360

T. 12 N., R. 5 W.,
Secs. 25, 26, 33, 34, and 35.

AZA–25510

T. 21 S., R. 12 E.,
Sec. 24.

AZA–25950

T. 24 S., R. 22 E.,
Sec. 9.

ARA–26183

T. 17 S., R. 13 E.,
Secs. 27 and 34.
T. 18 S., R. 13 E.,
Secs. 3 and 4.

AZA–27169

T. 20 S., R. 13 E.,
Sec. 12.

The mineral interests may be conveyed in whole or in part.

The purpose of conveyance is to allow consolidation of surface and subsurface ownership where there are no known mineral values, or in those instances where the reservation of mineral interests to the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use.

SUPPLEMENTARY INFORMATION: Concerning this application may be obtained from the Branch of Lands Operations, Arizona State Office, Bureau of Land Management, 3707 North Seventh Street, Phoenix, Arizona 85011. Telephone (602) 650–0518. Upon publication of this notice in the **Federal Register** the mineral interests owned by the United States in the lands under application shall be segregated to the extent that they will not be open to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate upon issuance of a conveyance document of such mineral interests, upon final rejection of the application, or two years from the date of publication of this notice, whichever comes first.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 93–18806 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–03–5410–11–A004; AZA–28010]

Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice aggregating approximately 33,064.405 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090. Serial Number AZA–28010.

Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel 1

T. 4 N., R. 4 W.,
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½E½.
T. 3 N., R. 5 W.,
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, SE¼NW¼, S½NE¼, E½SW¼, SE¼;
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 8, all, except CAP portion;
Sec. 9, all, except CAP portion;
Sec. 10, all;
Sec. 11, W½;
Sec. 14, W½;
Sec. 15, all;
Sec. 23, E½NE¼, W½NW¼.
T. 4 N., R. 5 W.,
Sec. 1 lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1 thru 4, inclusion, E½W½, E½
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½;

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* This corrects segregation published as AZA–23807.

Sec. 19, lots 1 thru 4, inclusive, E½W½,E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25 W½, W½NE¼, SE¼SE¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 4, inclusive, E½W½,E½;
Sec. 31, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 34, all;
Sec. 35, all;
T. 3 N., R. 6 W.,
Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 2, S½NE¼, SE¼
Sec. 11 E½;
Sec. 12, all.
T. 4 N., R. 6 W.,
Sec. 25, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, N½, SE¼.

Parcel 2

T. 5 N., R. 4 W.,
Sec. 33, S½W¼NW¼SE¼.

Parcel 3

T. 3 N., R. 5 W.,
Sec. 14, W½SE¼.

Parcel 4

T. 3 N., R. 5 W.,
Sec. 23, W½NE¼, E½NW¼.

Parcel 5

T. 4 N., R. 4 W.,
Sec. 8, E½.

Parcel 6

T. 5 N., R. 4 W.,
Sec. 4, SE¼.

Parcel 7

T.5 N., R. 4 W.
Sec. 9, E½.

Parcel 8

T. 5 N., R. 4 W.,
Sec. 10, SW¼NE¼, NW¼SE¼.

Parcel 9

T. 5 N., R. 4 W.,
Sec. 33, N½NW¼SW¼SE¼.

Parcel 10

T. 5 N., R. 4 W.,
Sec. 4, lot 1.
T. 6 N., R. 4 W.,
Sec. 33, E½ except west 1100 ft. thereof.

Consisting of 33,064.40 acres, more or less.

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years form the date of filing, July 23, 1993, whichever occurs first.

Dated: August 2, 1993.

G. L. Cheniae,

District Manager.

[FR Doc. 93–18882 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–920–4210–06; NMNM 52392]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a withdrawal for the Rio Grande Project continue for an additional 50 years. The land will remain closed to surface entry and mining. The land has been and will remain open to mineral leasing.

DATES: Comments should be received by November 4, 1993.

ADDRESSES: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502–7115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the withdrawal of land made by Secretarial Order dated December 19, 1934 be continued for a period of 50 year pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.c. 1714(f) (1988). The land is described as follows:

New Mexico Principal Meridian

T. 24 S., R. 1 E.,
Sec. 12, lot 1;
Sec. 13 lots 6, 7, and 8.

The area described contains 97.86 acres in Dona Ana County.

The withdrawal is essential for protection of the Rio Grande Project. The withdrawal currently segregates the land from surface entry and mining but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 28, 1993.

Kathy Eaton,

Acting State Director.

[FR Doc. 93–18702 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Leasing Systems, Sale 143.

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

a. Identifying the bidding systems to be used and the reasons for such use; and

b. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding Systems to be Used.* In the Outer Continental Shelf (OCS) Sale 143, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding With a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency

payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding With a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 143) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 143—Final Bidding Systems." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: August 2, 1993.

Tom Fry,

Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 93–18814 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf, Western Gulf of Mexico, Gas and Oil Lease Sale 143

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m. Central Standard Time (c.s.t.)) until the bid submission deadline at 10 a.m., Tuesday, September 14, 1993. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of bid opening, Wednesday, September 15, 1993. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, September 14, 1993. Bid opening time will be 9 a.m., Wednesday, September 15, 1993, at the Clarion Hotel, 1500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 58 FR 18416, published April 9, 1993.

3. *Method of Bidding.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Gas and Oil Lease Sale 143, not to be opened until 9 a.m., c.s.t., Wednesday, September 15, 1993," must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale:

(1) *Leases With a 12½–Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater as shown on Map 2 (see paragraph 12). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases With a 16⅔–Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see Map 2). Leases issued on blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* Each bidder must qualify for the sale by submitting prior to the bid submission deadline stated in paragraph 2, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985). See paragraph 14(e).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit Of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal Of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, Or Return Of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid may be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps—Texas Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) OCS Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (revised 01/27/76)
NG 14–6 Port Isabel (revised 01/15/92)
NG 15–1 East Breaks (revised 01/27/76)
NG 15–2 Garden Banks (revised 10/19/81)
NG 15–4 Alaminos Canyon (revised 04/27/89)
NG 15–5 Keathley Canyon (revised 04/27/89)
NG 15–8 (No Name) (revised 04/27/89)

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description Of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, are included in the following document available from the Gulf of Mexico regional office:

Western Gulf of Mexico Lease Sale 143—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 143—Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 143—Final. Bidding Systems." Refers largely to Royalty Rates.

Map 3 entitled "Western Gulf of Mexico Lease Sale 143—Final. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) Prospective bidders are advised of specific archaeological survey requirements further detailed in paragraph 14(g).

(d) *Blocks which have recently become available for leasing:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. Any questions may be directed to Ms. Patricia Bryars, Phone (504) 736–2763.

Update List: Galveston Blocks 323 and A–9; High Island Block 94; High Island, East Addition, Block A–170; High Island, South Addition, Block A–576; High Island, East Addition, South Extension, Blocks A–399 and A–401.

(e) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks already under lease, as listed at the end of this Notice, and blocks deferred from bidding as follows:

(1) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, no bids will be accepted on Blocks A–375 and A–398.

(2) No bids will be accepted in the Corpus Christi Naval Operations Area (near Corpus Christi, Texas), as depicted on Map 1 of paragraph 12(b) above.

(3) No bids will be accepted on Block A–125, as shown on Leasing Map No. 6A, Galveston, South Addition, the status of which is currently under appeal.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS–2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1—Protection of Archaeological Resources

(This stipulation will apply to all blocks offered for lease in this sale. Bidders should refer also to paragraph 14(g) of this Notice for specific survey requirements.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental

information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be, or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Protection of Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.) The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

NO ACTIVITY ZONE DEFINED BY ISOBATH

Bank name	Meters
Shelf Edge Banks:	
West Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system).	100
East Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system).	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank [2]	85
McGrail Bank [2]	85
Rezak Bank [2]	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85
Low Relief Banks [3]	
Mysterious Bank	[6] 74,76,78,80,84
Coffee Lump	Various.
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank [4]	50
South Texas Banks [5]	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

[1] Flower Garden Banks—In paragraph (c) a "4–Mile Zone" rather than a "1–Mile Zone" applies.

[2] Central Gulf of Mexico bank with a portion of its "1–Mile Zone" and/or "3–Mile Zone" in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

[6] See Map 3.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000–Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1–Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1–Mile Zone" designated, the "1,000 Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3–Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3—Military Warning Areas

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS; if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee; and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees; and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from

individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table below to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters for Western Planning Area

Area and Command headquarters

W–228—Chief, Naval Air Training, Naval Air Station, Attn: Lt. Cmdr. I.V. Velez, USN, or Lt. Joseph, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/3902

W–602—Headquarters ACC/DOSR, Detachment 1, Operations Headquarters, U.S. Strategic Air Command, Attn: Mr. Dave Olsen, Offutt AFB, Nebraska 68113–5550, telephone: (402)-294–2334

14. *Information to Lessees.*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone (504) 736–2519. For additional information, contact the Regional Supervisor for Leasing and Environment at the above address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Corps of Engineers (COE) permits are required for the construction of any artificial islands, installations, and other devices temporarily or permanently attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589–6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553, telephone (409) 766–3935.

(c) *Offshore Pipelines.* Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8–Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be canceled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) *Affirmative Action.* Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1).

Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are also advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) *Archaeological Resources.* Bidders are advised of the Notice to Lessees (NTL) affecting the historic shipwreck requirements published December 20, 1991, in the Federal Register pages 66076–66082 with an effective date of February 17, 1992. This NTL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990, lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of the NTL and LTL are available from the MMS Public Information Unit.

(h) *Proposed Rigs To Reefs.* Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship.

Alabama: Mr. Wallace M. Tatum (205) 968–7578

Louisiana: Mr. Rick Kaspzrac (504) 765–2375

Mississippi: Mr. Mike Buchanan (601) 385–5868

Texas: Ms. Jan Coulbertson (512) 389–4863

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinator for their areas of interest.

Tom Fry,

Director, Minerals Management Service.

Dated: August 2, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Outer Continental Shelf Lease Sale 143—Western Gulf of Mexico

Leased Blocks and Partial Blocks

Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

South Padre Island
1030, 1040, 1043, 1044, 1050, 1052, 1059, 1060, 1073, 1111, 1112, 1122, 1125, 1134, 1166

North Padre Island
886, 887, 908, 927, 935, 948, 956, 957, 967, 969, 976, 977, 978, 987, 988, 989

North Padre Island, East Addition
891, 892, 911, 931, 932, 951, 952, 970, 974, 975, 990, 993, 995, 996, 1011, 1016, 1018, A–8, A–9, A–10, A–11, A–12, A–13, A–23, A–26, A–27, A–32, A–38, A–42, A–43, A–44, A–48, A–55, A–57, A–58, A–59, A–62, A–63, A–64, A–69, A–70, A–72, A–75, A–76, A–83, A–84, A–86, A–87

Mustang Island
730, 731, 737, 738, 739, 740, 742, 743, 752, 754, 755, 757, 758, 762, 763, 764, 765, 767, 768, 769, 776, 778, 779, 781, 782, 784, 785, 786, 787, 789, 790, 791, 801, 802, 803, 804, 805, 806, 809, 811, 813, 814, 821, 822, 823, 824, 825, 826, 827, 828, 830, 831, 832, 833, 837, 838, 844, 846, 847, 848, 849, 850, 852, 853, 854, 858, 868, 869, 870, 871, 872, 873, 874, 875, 876, A–1, A–2, NE¼NW¼, NE¼;, NE¼NW¼;, NE¼SE¼, NW¼;, W½NW¼, NE¼, A–3, A–6, A–10, A–11, A–15, A–16, A–17, A–18, A–19, A–21, A–22, A–24, A–25, A–26, A–27, A–30, A–31, A–32, A–33, A–36, A–37, A–38

Mustang Island, East Addition
760, A–46, A–47, A–48, A–51, A–53, A–54, A–57, A–61, A–64, A–65, A–70, A–71, A–84, A–85, A–86, A–96, A–97, A–98, A–111, A–112, A–117, A–118, A–119, A–121, A–122, A–124, A–133, A–135, A–138, A–140, A–149, A–174

Matagorda Island
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[FR Doc. 93–18816 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Acadia National Park, Bar Harbor, Maine; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. ap. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, August 30, 1993.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Old Salt Restaurant, Swans Island, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the May 10, 1993 meeting.
2. Round Pond landowners boundary change proposal.
3. Report of the Conservation Easement Subcommittee.
4. Report of the Acquisition Subcommittee.
5. Superintendent's report.
6. Public comments.
7. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288–3338.

Dated: July 30, 1993.

Herbert Olsen,

Acting Regional Director.

[FR Doc. 93–18880 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–M

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on September 20, 21, and 22, 1993, in Washington, DC.

The Committee will meet in the Maritime Commission Hearing Room, 800 North Capital Street NW, Washington DC. Meetings will begin each day at 8:30 a.m. and conclude not later than 5 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The matters to be discussed at this meeting include development of final regulations implementing the statute.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, DC. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street Washington, DC.

Dated: July 15, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist and, Chief, Archeological Assistance Division.

[FR Doc. 93–18822 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–P

Subury, Assabet and Concord Rivers Study Committee; Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 Section 10), that there will be two upcoming meetings of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, August 26, 1993 and Thursday, September 23, 1993.

the Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5 (a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the

National Wild and Scenic Rivers System.

The August 26, 1993 meeting will be held at 7:30 p.m. at Great Meadows National Wildlife Refuge Headquarters, Weir Hill Road, Sudbury, Massachusetts. (Directions: From South—take Route 27 to Water Row Road in Sudbury, turn right at end on to Lincoln Road, left on Weir Hill Road, follow signs to Great Meadows Headquarters. From North—from Concord Road turn left on Lincoln Road in Sudbury, left on Weir Hill Road, follow signs to Great Meadows Headquarters.)

Agenda—August 26, 1993

I. Welcome, introductions, and approval of minutes from 7/22/93 meeting
II. Brief questions and comments from public
III. Subcommittee Reports—Subcommittee Chairs
  A. Water Resources Subcommittee: Water Resources Study
  B. River Conservation Planning Subcommittee
  C. Public Participation Subcommittee
IV. Discussion — Study Schedule and Town Meeting Approach
V. Discussion — Issues of Local Concern
VI. Opportunity for public questions and comments
VII. Other Business
  A. Next meeting dates and locations.

The September 23, 1993 meeting will be held at 7:30 p.m. at Lincoln Town Hall, Lincoln, Massachusetts. (Directions: Lincoln Town Hall is located on the south side of Lincoln Road, approximately 0.2 miles southwest of the 5-way intersection of Bedford, Trapelo, Weston, Lincoln, and Sandy Pond roads. From Route 2, take Bedford Road south to the 5-way intersection. Town Hall is straight ahead on the left hand side of Lincoln Road. From Route 117, take Tower or Lincoln Road north. Town Hall is on the right, just past the Post Office on the other side of the road.)

Agenda—September 23, 1993

I. Welcome, introductions, and approval of minutes from 8/26/93 meeting
II. Brief questions and comments from public
III. Subcommittee Reports—Subcommittee Chairs
  A. Water Resources Subcommittee; Water Resources Study
  B. River Conservation Planning Subcommittee
  C. Public Participation Subcommittee
IV. Discussion — What Good is Designation?
V. Discussion — Issues of Local Concern
VI. Opportunity for public questions and comments
VII. Other Business
  A. Next meeting dates and locations.

Dated: July 30, 1993.

Herbert Olsen,

Acting Regional Director.

[FR Doc. 93–18821 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–M

INTERAGENCY ENVIRONMENTAL TECHNOLOGY EXPORT GROUP

Environmental Technology Development and Export "Stakeholder" Meetings

SUMMARY: The U.S. Department of Commerce (DOC), the U.S. Department of Energy (DOE), the Environmental Protection Agency (EPA) (FRL 4688–60) and the White House Office of Science and Technology Policy announce a series of public "stakeholder" meetings to solicit input from the environmental technology and services industry (developers, vendors, services providers, and exporters), the users of environmental technology and services, the investment community, government organizations, and the general public on a Federal export promotion strategy that is under development for environmental technologies and services. This initiative will include steps to strengthen the domestic environmental technology industry. Three meetings will be held:

1. August 25, 1993. Los Angeles, California. Address: Los Angeles Airport Marriott Hotel, 5855 West Century Boulevard, Los Angeles, CA 9 a.m.–5:30 p.m.
2. August 31, 1993. Dallas, Texas. Address: EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor Suite, Dallas, TX 75202–2733. 9 a.m.–5:30 p.m.
3. September 2, 1993. Boston, Massachusetts. Environmental Protection Agency: Region 1. Address: John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203. 9 a.m.–5:30 p.m.

Written comments will also be accepted.

Discussion

On Earth Day, the President asked an interagency committee with representatives from the U.S. Department of Commerce (DOC), the U.S. Department of Energy (DOE), the Environmental Protection Agency (EPA), and other relevant agencies to develop an export promotion initiative for U.S. environmental technologies and services. This initiative will include steps to strengthen the domestic environmental technology industry, allowing U.S. firms to meet domestic environmental objectives and compete more effectively in international markets. the Federal agencies are examining several topics in developing their recommendations:

1. The process of developing and commercializing environmental technologies and the barriers to success.
2. The process of developing businesses that provide environmental technology and services and the barriers to their success.
3. The need for government to support potential exporters of environmental technologies and services.
4. The needs for in-country support to exporters.
5. Public/private efforts to develop overseas markets for U.S. environmental firms.

The Federal agencies will submit their proposals to the President this Fall. These proposals will capture the best opportunities for the U.S. government to support export promotion in the environmental technology and services areas.

The Federal agencies are seeking public comment from all involved "stakeholders". The Federal agencies invite individuals, firms, and other organizations to provide statements for the public meetings. Written comments for the record will also be accepted. Appropriate statements should include at least the following information:

1. The name, relevant affiliation, address, and phone and fax numbers for the respondent.
2. Comments about any of the five topics listed above that the respondent believes affect the development of commercial environmental technologies and the domestic and international operations of U.S. environmental businesses.
3. Suggestions of important opportunities for the government to assist the growth of a strong domestic environmental industry and exports of environmental technologies and services.
4. Illustration of the significance of these comments and suggestions using specific, real case studies, based on the direct experience of the potential respondent, that of their organization, or that of their clients or other associates.

Members of the public wishing to make comments at any of the meetings are invited to identify themselves in writing to Dr. Kathryn D. Sullivan, Chief Scientist of the National Oceanic and Atmospheric Administration of the Department of Commerce, by August 20, 1993, for the Los Angeles public meeting and by August 27, 1993, for the Dallas and Boston public meetings. It is requested that respondents provide a summary of their comments by the appropriate date and a complete text, if possible. Please send requests to make a presentation to Dr. Kathryn D. Sullivan, c/o Jonathan Menes, Department of Commerce, International Trade Administration, room 2815

(H2815/ITA), 14th and Constitution Avenue, NW., Washington, DC 20230.

The "stakeholder" meetings will be open to the public. It is hoped that time will be found for all respondents to make presentations at the meeting and for all questions to be answered. Priority for making oral presentations may be given to those submitting written comments to ensure that all four criteria listed above are adequately discussed. More time may be given to presentations consolidating the views of a number of potential respondents.

The written record will remain open until September 6, 1993. All written comments will be received and reviewed by the responsible representatives of the Federal agencies. Please send written comments to Kathyrn D. Sullivan, c/o Jonathan Menes, Department of Commerce, International Trade Administration, room 2815 (H2815/ITA), 14th and Constitution Avenue, NW., Washington, DC 20230.

Additional information may be obtained from Jonathan Menes by calling 202–482–5145 or by written request sent by fax to 202–482–4614 or by mail to the above address.

Dated: July 30, 1993.

Dr. Kathryn D. Sullivan,

Chairperson.

[FR Doc. 93–18773 Filed 8–5–93; 8:45 am]

BILLING CODE 3560–60–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–658 (Preliminary)]

Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–658 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of class 150 stainless steel threaded pipe fittings,[1] provided for in subheadings 7307.19.90, 7307.22.10, 7307.22.50, and 7307.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 16, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted in response to a petition filed on August 2, 1993, by Alloy Stainless Products, Totawa NJ; and Capitol Manufacturing Company, Columbus, OH.

Participation in the Investigation and Public Service List.

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants 3 under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 23, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than August 19, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] For purposes of this investigation, class 150 stainless steel threaded pipe fittings are defined as cast or forged stainless steel products used to connect pipe sections in piping systems where conditions require non-permanent, threaded connections and the ability to withstand normal pressure service (150 pounds per square inch (psi) at 350°F and 300 psi at 20 to 150°F) as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. These fittings are generally used for process piping systems such as those in chemical, pharmaceutical, food processing, waste treatment and paper production facilities.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 93–18978 Filed 8–5–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–343]

Commission Determination to Review and Remand an Initial Determination Terminating the Investigation as to Respondent A.R. Hutchings on the Basis of a Proposed Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of certain mechanical gear couplings and components thereof.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 17) which terminated the above-captioned investigation on the basis of, inter alia, a proposed consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3097.

SUPPLEMENTARY INFORMATION: On April 15, 1993, complainant Kop-Flex, Inc. (Kop-Flex) and respondents K-Power Products, Inc. (K-Power) and A.R. Hutchings filed a joint motion to terminate the investigation on the basis of a proposed consent order, consent order agreement, and settlement agreements. The Commission investigative attorney supported the motion. On June 25, 1993, the presiding ALJ issued an ID (Order No. 17) terminating the investigation on the basis of the proposed consent order. No petitions for review, or agency or public comments were filed.

The Commission has determined to review and remand the ID to the ALJ for further proceedings consistent with the Commission's Order. The basis for the Commission's review and remand of the ID is that the proposed consent order directed to Hutchings is ambiguous, and may be extraterritorial in scope and thus exceed the Commission's jurisdiction.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) and Commission interim rule 210.55 (19 CFR 210.55).

Copies of the Commission's Order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: July 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–18803 Filed 8–5–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor (DOL), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202)395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration

Unemployment Insurance Core Revenue Quality Control Program Annually

State or local governments

52 respondents; 2,266.3846 hours per response; 117,852 total hours

Core Revenue Quality Control is the States' and DOL's main vehicle for assessing the essential quality dimension (accuracy, timeliness, completeness) of tax processing functions. Findings will be used to improve UI operations and assist DOL in oversight, technical assistance, and policy development.

New

Employment and Training Administration

Compendium of State Unemployment Insurance Operations, Organizations and Relationship

Every three years

State or local governments

53 respondents; 3 hours per response; 159 total hours

The Unemployment Insurance Service (UIS) has a need to know how each of the 53 State Employment Security Agencies (SESAs) uniquely operate in specific areas, linkages with other programs and how UI activity areas are

managed. No current reporting mechanism exists to gather this information.

Extension

Departmental Management—President's Committee on Employment of People with Disabilities

Job Accommodation Network (JAN)

1225–0022

On occasion

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations 4,500 respondents; 30 minutes per response; 2,250 total hours; 1 form.

The President's Committee on Employment of People with Disabilities has established the Job Accommodation Network (JAN) to provide information on possible accommodations to employers and others desiring to hire, retain, or promote persons with disabilities within the work setting. Continued use of this information collection will enhance the effectiveness of JAN's information resources which may be accessed by representatives of business, rehabilitation professionals, and other service providers for the purpose of identifying accommodations which will assist persons with disabilities in obtaining/maintaining employment.

Extension

Employment and Training Administration

Trade Adjustment Assistance (TAA Financial Status/Request Funds Report)

1205–0275, ETA 9023

Quarterly

State or local governments

50 respondents; 2 hours per response; 5 average responses per year; 500 total hours; 1 form.

The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269A. The required data are necessary in order to meet statutory requirements prescribed in Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988.

Extension

Employment and Training Administration

Labor Condition Application for H–1B Nonimmigrants 1205–0310; ETA 9035

Other

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

Form No.	Respondents	Average time per response	Burden hours
ETA 9035	50,000	1 hour	50,000
Complaints	200	15 minutes	50
50,050 total hours			

The information provided on the ETA 9035 by employers seeking to use aliens in specialty occupations on H–1B visas will permit the DOL to meet Federal responsibilities for program administration, management and oversight.

Extension

Mine Safety and Health Administration

Alternative Mine Rescue Capability for Small and Remote Mines and Mines with Special Mining Conditions

1219–0078

On occasion

Businesses or other for-profit; Small businesses or organizations

25 respondents; 2 hours per response; 50 total hours

If an underground mine is small and remote or is operating under special mining conditions, the operator may apply for permission to provide alternative mine rescue capability. The intent of the regulation is to establish the best possible rescue response available under the circumstances.

Extension

Employment and Training Administration

Unemployment Insurance Self-Employment Demonstration

1205–0314

Annually

Individuals or households

Title	Respondents	Estimated time per response	Burden hours
First Followup	500	33 minutes	275
Second Followup	300	28 minutes	140
415 total hours			

The DOL is evaluating two experimental demonstration projects that test self-employment as a strategy to assist unemployment insurance claimants to return to work. Approval is sought to extend the information collection period to complete the evaluation of these demonstration projects.

Revision

Bureau of Labor Statistics

Occupational Compensation Survey

1220–0007

State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations

Form No.	Respondents	Frequency	Average time per response (minutes)
2751A	25,900	Annual or biennial	5
2751A-Cont	6,720	Every 4 or 5 years	15

Form No.	Respondents	Frequency	Average time per response (minutes)
2752A	6,720	Every 2 or 4 years	10
2752B	19,180	Every 1 to 4 years	15
2753F	15,540	Every 1 to 4 years	60
2753G	14,300	Every 2 to 4 years	90
2753GAF	600	Every 1 to 2 years	5
43,026 total hours			

Survey results are needed for a variety of Federal and non-Federal purposes, including administration of the Federal Employees Pay Comparability Act and the Service Contract Act. Results are used for compensation administration, negotiations and mediation proceedings, plant location decisions, and for responding to information requests from the general public.

Signed at Washington, DC this 3rd day of August, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–18837 Filed 8–5–93; 8:45 am]

BILLING CODE 4510–87–P

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I

Wage Decision No. AL930023

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York
- NY930036 (Aug. 6, 1993)
- NY930037 (Aug. 6, 1993)
- NY930038 (Aug. 6, 1993)
- PA930034 (Aug. 6, 1993)
- PA930035 (Aug. 6, 1993)
- PA930036 (Aug. 6, 1993)
- PA930037 (Aug. 6, 1993)

Volume II

Iowa
- IA930030 (Aug. 6, 1993)

Kansas
- KS930027 (Aug. 6, 1993)
- KS930028 (Aug. 6, 1993)
- KS930029 (Aug. 6, 1993)

Louisiana
- LA930018 (Aug. 6, 1993)
- LA930019 (Aug. 6, 1993)

LA930020 (Aug. 6, 1993)
LA930021 (Aug. 6, 1993)
LA930022 (Aug. 6, 1993)
LA930023 (Aug. 6, 1993)
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LA930027 (Aug. 6, 1993)
LA930028 (Aug. 6, 1993)
LA930029 (Aug. 6, 1993)
LA930030 (Aug. 6, 1993)
LA930031 (Aug. 6, 1993)

Volume III

Alaska
AK930002 (Aug. 6, 1993)
AK930003 (Aug. 6, 1993)
Montana
MT930009 (Aug. 6, 1993)
MT930010 (Aug. 6, 1993)
MT930011 (Aug. 6, 1993)
MT930012 (Aug. 6, 1993)
MT930013 (Aug. 6, 1993)
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MT930016 (Aug. 6, 1993)
MT930017 (Aug. 6, 1993)
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MT930019 (Aug. 6, 1993)
MT930020 (Aug. 6, 1993)
Wyoming
WY930012 (Aug. 6, 1993)
WY930013 (Aug. 6, 1993)
WY930014 (Aug. 6, 1993)
WY930015 (Aug. 6, 1993)
WY930016 (Aug. 6, 1993)
WY930017 (Aug. 6, 1993)
WY930018 (Aug. 6, 1993)
WY930019 (Aug. 6, 1993)
WY930020 (Aug. 6, 1993)
WY930021 (Aug. 6, 1993)
WY930022 (Aug. 6, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930023 (Feb. 19, 1993)
Florida
FL930017 (Feb. 19, 1993)
Maryland
MD930001 (Feb. 19, 1993)
Pennsylvania
PA930001 (Feb. 19, 1993)
PA930004 (Feb. 19, 1993)

Volume II

Arkansas
AR930003 (Feb. 19, 1993)
AR930008 (Feb. 19, 1993)
Kansas
KS930006 (Feb. 19, 1993)
KS930007 (Feb. 19, 1993)
KS930009 (Feb. 19, 1993)
KS930010 (Feb. 19, 1993)
KS930011 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930013 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930021 (May 7, 1993)
KS930022 (May 28, 1993)
KS930023 (Jul. 2, 1993)
KS930026 (Jul. 16, 1993)
Louisiana
LA930005 (Feb. 19, 1993)
Texas
TX930001 (Feb. 19, 1993)
TX930018 (Feb. 19, 1993)

Volume III

Alaska
AK930001 (Feb. 19, 1993)
California
CA930001 (Feb. 19, 1993)
CA930002 (Feb. 19, 1993)
CA930004 (Feb. 19, 1993)
Colorado
CO930014 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)
ID930002 (Feb. 19, 1993)
Montana
MT930001 (Feb. 19, 1993)
Oregon
OR930001 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th day of July 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–18628 Filed 8–5–93; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Advisory Council on Unemployment Compensation; Hearing

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992, **Federal Register**, February 3, 1992, pg. 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-state triggers for the Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

TIME AND PLACE: The hearing will be held from 9:30 a.m. to 4 p.m. on September 20, 1993 at the Southland Center Hotel, Seminar Theater, 400 N. Olive Street, Dallas, Texas.

PUBLIC PARTICIPATION: The hearing will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal Official (DFO), listed below, if special accommodations are needed.

SUBMITTING WRITTEN STATEMENTS: Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. Statements must be received not later than September 7, 1993.

PRESENTING ORAL STATEMENTS: Individuals or organizations wishing to present oral statements should send a written request to Ellen S. Calhoun, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4206 Washington, DC 20210. Requests for presenting oral statements should indicate a preferred time slot (either morning or afternoon) and the

request must contain a daytime phone number. All such requests must be received not later than September 7, 1993.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. (202) 219–7831.

Signed at Washington, DC, this 29th day of July 1993.

Carolyn M. Golding,

Acting Assistant Secretary.

[FR Doc. 93–18835 Filed 8–5–93; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992, **Federal Register**, February 3, 1992, pg. 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-state triggers for the Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

TIME AND PLACE: The meeting will be held from 9:30 a.m. to 5 p.m. on September 21, 1993 at the Southland Center Hotel, North Section of Ballroom, 400 N. Olive Street, Dallas, Texas.

AGENDA: The agenda for the meeting is as follows:

(1) Introduction of new Council members.

(b) Review of the priorities established at the May 11, 1993 meeting of the Council.

(c) Discussion of the reasons for the decline in the Insured Unemployment Rate and the policy implications.

(d) Discussion of the Extended Benefit Program.

(e) Discussion of the state of Unemployment Compensation Financing.

(f) Discussion of issues and determination of priorities for additional review and research.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal Official (DFO), listed below, if special accommodations are needed.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. (202) 219–7831.

Signed at Washington, DC, this 29th day of July 1993.

Carolyn M. Golding,

Acting Assistant Secretary.

[FR Doc. 93–18836 Filed 8–5–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation. In accordance with Executive Order 12838, the Office of Management and Budget has approved the continuation of this agency-established committee. This notice informs of the renewal of the Advisory Committee on Preservation for a period not to extend beyond July 13, 1995.

The Archivist of the United States has determined that the renewal of this Advisory Committee is in the public interest. The Committee Management Secretariat, General Services Administration has concurred with the renewal. The Advisory Committee provides NARA with expert knowledge and valuable advice on technical preservation issues, including emerging preservation problems and technologies for a variety of media. NARA uses the Advisory Committee's recommendations as it fulfills its mandate to preserve the permanently valuable records of the Federal Government.

Dated: July 29, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–18789 Filed 8–5–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory panel (Dance Challenge Section) to the National Council on the Arts will be held on August 26, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meeting, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–18785 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Section A) to the National Council on the Arts will be held on August 24–27, 1993. The panel will meet from 8:30 a.m. to 7 p.m. on August 24–26, 1993 and from 8:30 a.m. to 5 p.m. on August 27, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on August 25–27, 1993 and from 2 p.m. to 5 p.m. on August 27, 1993 for guidelines and policy discussion.

The remaining portions of this meeting from 8:30 a.m. to 7 p.m. on August 24, 1993, from 9 a.m. to 7 p.m. on August 25–26, 1993, and from 9 to 2 p.m. on August 27, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 3, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–18783 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Section B) to the National Council on the Arts will be held on August 31–September 3, 1993. The panel will meet from 9 a.m. to 7 p.m. on august 31, 1993, from 8:30 a.m. to 6 p.m. on September 1–2, 1993, and from 8:30 a.m. to 5 p.m. on September 3, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on September 1–3, 1993, and from 2 p.m. to 5 p.m. on September 3, 1993 for policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 31, 1993, from 9 a.m. to 6 p.m. on September 1–2, 1993, and from 9 a.m. to 2 p.m. on September 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 92–18784 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education and Research Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: August 20–23, 1993; a.m. to 5 p.m. each day.

Place: Holiday Inn, Governors' House; Rhode Island Avenue at 17th Street, NW., Washington, DC.

Type of meeting: Closed.

Contact person: Dr. Roosevelt Y. Johnson, Program Director, Graduate Education and Research Development, rm. 1202, NSF, Washington, DC 20550. Telephone: (202) 357–9453.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reasons for closing: The proposals being reviewed including information of a proprietary or confidential nature, including technical information; financial; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 25, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–18778 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation announces the following meeting:

Name: Special Emphasis in Industrial Innovation Interface.

Date and time: August 26, 1993: 8:30 a.m. to 5 p.m.

Place: Rooms 500 A & B, National Science Foundation, 1110 Vermont Avenue NW., Washington, DC

Type of meeting: Closed.

Contact person: Dr. Richard I. Schoen, Deputy Division Director of Industrial Innovation Interface, 1110 Vermont Avenue NW., rm. V–502, Washington, DC 20550. Telephone (202) 653–5202.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluation proposals for the Small Business Innovation Research Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–18793 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in MIPS Division; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Microelectronic Information Processing Systems.

Date and time: August 27, 1993, 8:30 a.m. to 5 p.m.

Place: Room 414, 1800 G St. NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact person: Dr. Robert B. Grafton, Program Director, MIPS Division, room 414, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7853.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 2, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–18779 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs.

Date and time: September 1–2, 1993; 8 a.m. to 6 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of meeting: Closed.

Contact person: Polly A. Penhale, Program Manager, OPP, room 620, Telephone: (202) 357–7894.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Biology and Medicine proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 2, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–18780 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co., South Texas Project, Unit Nos. 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix A to 10 CFR part 20 in response to a request filed by the Houston Lighting & Power Company (the licensee) for the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement in footnote d-2(c) in appendix A to 10 CFR part 20 related to protection factors for respiratory protective devices. The footnote requires that no allowance is to be made for the use of sorbents against radioactive gases or vapors. The exemptions would allow the use of a radioiodine protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's facility.

The proposed action is in accordance with the licensee's request for exemption dated December 19, 1991, and supplemented by letter dated July 1, 1993.

The Need for the Proposed Action

The proposed exemption is needed because the use of the sorbent canisters described in the licensee's request can potentially reduce the time required to complete those tasks that require the use of respiratory protection devices, thereby minimizing the amount of radiation exposure to plant operating personnel.

Environmental Impacts of the Proposed Action

The proposed exemption will most likely reduce the work effort and occupational exposure from some tasks at South Texas. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 25 percent for tasks requiring radioiodine protection. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect the potential for, or consequences of, radiological accidents and does not affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impact, the proposed exemption involves systems located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts

associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2, dated August 1986.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's requests. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 19, 1991, supplemented July 1, 1993, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 30th day of July 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18833 Filed 8–5–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Corrected Exemption

In the Matter of Indiana Michigan Power Company (Donald C. Cook Nuclear Plant Units 1 and 2).

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.2(b)(ii) of appendix J of 10 CFR part 50 requires, in part, that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required by the plant's Technical Specifications.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated December 21, 1992, the licensee requested an Exemption from certain requirements of 10 CFR part 50, appendix J. On July 16, 1993, the Commission granted the requested Exemption which was published in the **Federal Register** on July 23, 1993 (58 FR 39583). The Exemption issued on July 16, 1993, included two typographical errors. This Exemption corrects those errors and supersedes the July 16, 1993 Exemption.

In its letter dated December 21, 1992, the licensee requested an Exemption from the requirement of 10 CFR part 50, appendix J, III.D.2(b)(ii) identified in section II above, and substitution of an air lock door seal leakage test (paragraph III.D.2(b)(iii) of appendix J, 10 CFR part 50) for the full pressure air lock test otherwise required by paragraph III.D.2(b)(ii) when the air lock is opened while the reactor is in cold shutdown (Mode 5) or refueling (Mode 6), if no maintenance has been performed on the air lock that could affect its sealing capability. The exemption would also allow the door seal leakage rates test of III.D.2(b)(iii) to be used when the maintenance affecting the air locks sealing capability was performed only on the door gaskets. That is, door seal testing will be done after each opening, after maintenance which could affect the air lock door gaskets, and prior to establishing containment integrity. If maintenance that could affect sealing capability has been performed on an air lock, other than the door gaskets, a full pressure air lock tests must still be performed.

If an air lock is opened during Modes 5 and 6, paragraph III.D.2(b)(ii) of appendix J requires that an overall air lock leakage test at not less than the calculated peak containment pressure from a design-basis LOCA (Pa) be conducted before plant heatup and startup (i.e., entering Mode 4). The existing air lock doors are so designed that a full-pressure (i.e., Pa=12.0 psig) test of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and removing strongbacks requires at least 8 hours per air lock (there are two air locks) during which access through the air lock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of appendix J and the test required by paragraph III.D.2(b)(iii) of appendix J are current, no maintenance (other than to door gaskets) has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed, there is no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 and Mode 6.

Accordingly, the Commission concludes that the licensee's proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the pressure test of paragraph III.D.2(b)(ii) of appendix J is acceptable following door gasket maintenance and/or prior to entering Mode 4. Furthermore, the licensee has committed to meet the requirements of paragraph III.D.2(b)(ii) of appendix J whenever other maintenance that could affect sealing capability has been performed on the air lock.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. The purpose of paragraph III.D.2(b)(ii) is to ensure that air locks are properly sealed when containment integrity is required. The proposed alternative test method is sufficient to achieve this underlying purpose in that it provides adequate assurance of continued leak

tight integrity of the air lock. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) and (iii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation. Compliance would result in undue hardship that would be significantly in excess of that contemplated when the regulation was adopted in that plant startup would be delayed while an overall air lock leakage test was performed at full pressure. The effort and delay required is not warranted by the resulting safety benefit.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) and (iii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption as described in Section III above from 10 CFR part 50, appendix J, III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (58 FR 35984).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of July.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18832 Filed 8–5–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

The Federal Prevailing Rate Advisory Committee meeting scheduled for August 16, 1993, has been canceled.

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, Aug. 26, 1993
Thursday, Sept. 9, 1993
Thursday, Sept. 23, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: July 23, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 93–18772 Filed 8–5–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Change to the Domestic Mail Classification Schedule Regarding Prebarcoding of Letter-Size Mail

AGENCY: Postal Service.

ACTION: Notice of implementation of a change to the domestic mail classification schedule.

SUMMARY: This gives notice that the Domestic Mail Classification Schedule is amended to provide that First-, second-, and third-class letter-size mail must bear a barcode as prescribed by the Postal Service to qualify for pre-barcoded rates.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268–2981.

SUPPLEMENTARY INFORMATION: On November 9, 1992, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Pre-barcoded Letter Mail Requirements, PRC Docket No. MC93–2, requesting that the Domestic Mail Classification Schedule (DMCS) be changed to re-define prebarcoded letter-size mail as mail "which bears a barcode as prescribed by the Postal Service." The Postal Service's Request also included a number of stylistic, non-substantive changes. The Postal Rate Commission published a notice in the Federal Register on November 20, 1992 (57 FR 54866) describing the request and offering interested parties an opportunity to intervene.

On March 5, 1993, the Postal Service published notice that the DMCS change it had requested would be placed into effect on a temporary basis, pursuant to 39 U.S.C. 3641(e) and as authorized by the Board of Governors of the Postal Service in Resolution No. 93–3 (March 1, 1993). The temporary change took effect at 12:01 a.m. on March 21, 1993, (58 FR 12605).

On July 13, 1993, the Postal Rate Commission issued an Opinion and Recommended Decision in Docket No. MC93–2. The Commission approved the Postal Service's Request, with minor modifications, and recommended amending the DMCS to re-define pre-

barcoded letter-size mail as mail which bears a barcode "representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service."

On August 2, 1993, the Governors of the Postal Service, pursuant to their authority under 39 USC 3625, approved the Recommended Decision of the Postal Rate Commission in Docket No. MC93–2. The Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the DMCS changes approved by the Governors effective at 12:01 a.m. on August 11, 1993 (Resolution No. 93–9).

In accordance with the Decision of the Governors and Resolution No. 93–9, sections 100.0204, 100.0214, 100.031, 100.043, 100.047, 100.100, 200.095, 300.0232, 300.0235, and 300.0236 of the DMCS will be amended to read as follows effective at 12:01 a.m. on August 11, 1993:

Classification Schedule 100—First-Class Mail

* * * * *

100.0204 Pre-barcoded Presorted Mail

Prebarcoded presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to three- or five-digit ZIP Codes or both, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service, and which meets the preparation requirements in section 100.047.

* * * * *

100.0214 Pre-barcoded Rate Category Post Cards

A pre-barcoded rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed at the pre-barcoded rate for post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. Pre-barcoded rate category post cards must:

i. Bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service.

ii. Be presented in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4¼ inches; or

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet addressing specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Meet barcoding specifications and other preparation requirements prescribed by the Postal Service.

vi. Have postage paid in a manner not requiring cancellation.

* * * * *

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b or section 100.0214 for ZIP + 4 and prebarcoded rate category cards may be mailed only under sections 100.020, 100.0201, 100.0203, and 100.0204, as appropriate.

* * * * *

100.043 Postal and post cards, including ZIP+4 and pre-barcoded rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

* * * * *

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates must be properly prepared and presorted as prescribed by the Postal Service.

* * * * *

100.10 Authorizations and Licenses

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP+4 rate category mail and pre-barcoded presorted mail.

* * * * *

Classification Schedule 200—Second-Class Mail

* * * * *

200.095 Copies of any automation compatible second-class mail which bear a proper ZIP+4 code, or which bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service qualify for the applicable ZIP+4 or pre-barcoding discounts as set forth in Rate Schedules 200, 201, 202, and 203.

* * * * *

Classification Schedule 300—Third-Class Mail

* * * * *

300.0232 Basic Sortation, Pre-barcoded Mail

Basic sortation pre-barcoded mail is mail mailed under section 300.0230 which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

* * * * *

300.0235 Three-Digit Presort Level, Pre-barcoded Mail Three-digit presort level, pre-barcoded mail is mail mailed under section 300.0233 which is presorted to three digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

300.236 Five-Digit Presort Level, Pre-barcoded Mail Five-digit presort level, pre-barcoded mail is mail mailed under section 300.0233 which is presorted to five digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications, and other preparation requirements prescribed by the Postal Service.

The temporary classification change that took effect on March 21, 1993 will terminate at 10:01 a.m. on August 11, 1993, when the change described above

takes effect. Implementing regulations also become effective on August 11, as noted elsewhere in this issue.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–18838 Filed 8–5–93; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 2, 1993.

On July 23, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7–10991	LLTC	Linear Technology Corp., Common stock, no par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–10992	MXTR	Maxtor Corp., Common stock, $.01 per value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 23, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18791 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 272–5407

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension

Rule 15Aa–1; Form X–15AA–1: File No. 270–24

Rule 15Aj–1; Forms X–15AJ–1 and X–15AJ–2: File No. 270–25

Rule 17Ac3–1; Form TA–W: File No. 270–96

Rule 17Ad–10: File No. 270–265

Rule 17f–2(c): File No. 270–35

Rule 17f–2(d): File No. 270–36

Rule 17f–2(e): File No. 270–37

Rule 19b–4; Form 19b–4: File No. 270–38

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted for extension of Office of Management and Budget approval of rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.).

Rule 15Aa–1 and Form X–15AA–1 provide for the application for registration of an association as a national securities association or as an affiliated securities association. One respondent incurs an annual total of 150 burden hours complying with Rule 15Aa–1.

Rule 15Aj–1 and Forms X–15AJ–1 and X–15AJ–2 provide for registered securities associations to file amendments to their registration statements to reflect changes made during the preceding year in the information contained in those statements. One respondent incurs an annual total of 3 burden hours complying with Rule 15Aj–1.

Rule 17Ac3–1 prescribes filing requirements for registered transfer agents seeking to deregister. Form TA–W implements the rule. Approximately 30 respondents incur a cumulative total of 15 annual burden hours complying with Rule 17Ac3–1.

Rule 17Ad–10 requires transfer agents to create and maintain accurate securityholder files. Approximately 1800 recordkeepers incur a total of 36,000 hours complying with Rule 17Ad–10.

Rule 17f–2(c) requires registered national securities exchanges and associations to submit plans for collecting, processing, and forwarding fingerprint cards to the FBI. One respondent incurs an annual total one burden hour complying with Rule 17f–2(c).

Rule 17f–2(d) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies to maintain fingerprint cards processed by the FBI, or any substitute records when original fingerprint cards are not returned by the FBI. These records must be maintained for all employees for the term of their employment plus three years. Approximately 9500 respondents incurs an annual total burden of .75 hours complying with the recordkeeping requirements of Rule 17f–2(d).

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemptions from the fingerprint requirement to prepare and maintain a statement supporting their claim for exemption. Approximately 75 respondents incurs an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e).

Rule 19b–4 requires the various self-regulatory organizations to file their rule proposals on Form 19b–4. A total of 25 respondents incur an annual total of 12,390 burden hours complying with Rule 19b–4.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be

directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Nos. 3235–0030, 3235–0044, 3235–0151, 3235–0273, 3235–0029, 3235–0028, 3235–0031, 3235–0045), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18861 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 2, 1993.

On July 28, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7–11047	OXHP	Oxford Health Plans, Inc., Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–11048	CRGN	Cragin Financial, Common Stock, $.01 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 23, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18790 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32703; File No. SR–PSE–92–37]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Permanent Approval of the Pacific Options Exchange Trading System ("POETS") Pilot Program

July 30, 1993.

I. Introduction

On October 30, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change seeking permanent approval of its automated options trading system pilot program designated as the Pacific Options Exchange Trading System ("POETS").[3] Notice of the proposal to grant permanent approval to POETS and acceleration of the provisions in the proposal extending the pilot program through July 31, 1993, appeared in the **Federal Register** on July 7, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

In January 1990 the Commission approved POETS on a pilot basis.[5] Subsequently, the Commission approved several Exchange proposals to extend the pilot, including, most recently, an extension through July 31, 1993.[6]

As noted above, POETS is an automated trading system comprised of an automatic execution system, ORS, Auto-Book,[7] and Auto-Quote.[8] ORS

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] POETS is a completely automated trading system comprised of an automatic execution system, an options order routing system ("ORS"), an on-line limit order book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). The Commission approved the PSE's POETS system on a six-month pilot basis on January 18, 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File SR–PSE–89–26) ("Pilot Approval Order"). The initial six-month approval expired on July 22, 1990, and was extended until October 22, 1990, in order to allow the PSE to complete installation of the system's hardware. *See* Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 31272 (order approving File No. SR–PSE–90–28). In January 1991, the POETS pilot program was extended until June 30, 1991. See Securities Exchange Act Release No. 28778 (January 14, 1991), 56 FR 2576 (order approving File No. SR–PSE–90–36). In April 1991, the Commission approved the PSE's proposal to implement the system's automatic and semi-automatic execution features, termed "Auto-Ex" and "semi-Auto-Ex," respectively, on a floor-wide basis, and to extend the pilot until July 31, 1992. See Securities Exchange Act Release No. 29104 (April 18, 1991), 56 FR 19134. The POETS pilot program was extended through October 31, 1992. See Securities Exchange Act Release No. 31022 (August 12, 1992), 57 FR 37179 (order approving File No. SR–PSE–92–26), and through April 30, 1993. See Securities Exchange Act Release No. 31935 (March 1, 1992), 57 FR 12611 (order approving File No. SR–PSE–92–46). Most recently, the pilot program was extended through July 31, 1993. See Securities Exchange Act Release No. 32558 (June 30, 1993), 58 FR 36493 (order granting partial accelerated approval to File No. SR–PSE–92–37).

[4] See Securities Exchange Act Release No. 32558 (June 30, 1993), 58 FR 36493.

[5] See Pilot Approval Order, supra, note 3.

[6] See Securities Exchange Act Release No. 32558, supra note 3.

[7] Auto-Book, the on-line limit order book function of POETS, eliminates the use of the physical file of orders. Auto-Book allows public Limit Order Book ("Book") staff to enter update, inquire, delete, cancel and execute Book orders. Auto-Book also allows members firms to enter cancel, update, and inquire about their public customers' Book orders. Because the eligibility requirements for Auto-Book are the same as for the manual Book, only customer limit orders and cabinet orders (off-board transactions that are normally utilized to permit an investor to close out his position for one dollar per contract) may be submitted to the Book.

[8] Auto-Quote allows market quotes to be generated systematically, using programmed theoretical models and variable criteria which are entered through the Auto-Quote function by Book

Continued

permits the Exchange to accept, edit, and route market[9] and limit orders[10] which are submitted electronically to the Exchange by member firms for execution at market prices or placement in the Book. Currently, all eligible market orders and marketable limit orders received by ORS are directed to Auto-Ex.[11] In determining the eligibility of an order for routing to Auto-Ex, ORS utilizes order size, class, and series parameters. Although the order size parameter may be changed on an issue-by-issue basis by authorized Exchange staff pursuant to an Options Floor Trading Committee ("OFTC") determination, the maximum order size for execution through Auto-Ex or semi-Auto-Ex is ten contracts.[12]

In full Auto-Ex, an incoming eligible market or marketable limit order is priced and executed automatically at the displayed market bid or offer. A participating market maker is designated as contra-side to an Auto-Ex order.[13] Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book priority in all options.[14] If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book.

The Exchange's Pilot Report states that, as of August 1992, approximately 20% of the Exchange's daily options order flow was routed through ORS, 43% of all option series were eligible for automatic execution, and approximately 13.5% of those Auto-Ex eligible trades where traded through Auto-Ex.[15]

All non-marketable limit orders are directed to Auto-Book, which prioritizes the orders in the on-line Book based upon limit price and time received within each series, with separate priority for buy and sell orders. In order to be eligible for Auto-Book an order must be for a member firm's customer's account, and the order must meet certain size requirements determined by the OFTC. When a new order is entered on Auto-Book, the system verifies the current best Book bid/ask for the series and automatically updates the Book bid/ask and size if the limit price entered is at or better than the bid/ask resting on the Book. Auto-Book automatically compares the market bid/ask field to the Book bid/ask whenever the current market quote or Book quote changes for a specific series. When the Book bid/ask is at or better than the market the system signals both the trading crowd and Book staff that there is a customer trade that should be given priority. The booked order is then executed automatically against the displayed market quote.

As noted above, the Exchange has submitted a Pilot Report to the Commission.[16] The PSE believes, as evidenced by the Pilot Report, that POETS is a viable and effective trading system. Specifically, the PSE believes that POETS has provided, and continues to provide, substantial benefits to the investing public, including the on-line updating of quotations, increased speed and accuracy in the execution and reporting of trades, and improved accuracy and accessibility of trade information. The PSE believes that POETS has contributed to the quality and integrity of the Exchange's options markets and notes that there have been no capacity problems with POETS during the operation of the pilot program. In addition, the Exchange states that it has received no formal complaints about POETS, nor has the Exchange taken any disciplinary action against a member for activities involving POETS.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[17] and 11A.[18]

Based upon the representations made by the PSE in the Pilot Report, the Commission believes that POETS has benefited public customers and PSE member firms by enabling the Exchange to provide on-line updating of market quotes, more efficient execution of customer orders, and faster, more accurate trade information reports.[19] The Commission believes that the enhanced efficiency of order processing resulting from POETS has helped to ensure the depth and liquidity of the PSE's options markets and, in addition, that POETS has enabled the Exchange to develop more accurate and timely audit trails, thereby helping the PSE to maintain the integrity of its markets.

With regard to the specific components of POETS, the Commission believes that the automatic execution and on-line Book features of POETS have benefited public customers by providing a more efficient method of executing small market and limit orders in PSE options, and by allowing public customers to receive immediate executions and nearly instantaneous confirmations of orders executed through Auto-Ex. The Commission believes that Auto-Ex has benefited public customers by ensuring that a POETS order will be executed at the current disseminated quotation. In addition, the Commission believes that the on-line Book has benefited investors because, as noted in the Pilot Report, the Book function allows the Exchange's members to place customer limit orders in the Book so that Book staff are responsible for executing those orders at the best possible market price. These orders are given priority for execution over any other incoming orders at that price once the bid or offer is announced and displayed to the crowd.[20]

The Commission continues to believe, as it found in the Pilot Approval Order, that Auto-Ex reduces the number of transactions that require manual

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staff. Market quotes are entered into the trading system and used to update the screen information on the monitors above the trading floor.

[9] A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd.

[10] A limit order is an order to buy or sell a stated amount of a security at a specified price.

[11] Auto-Ex and semi-Auto-Ex have been implemented on a floor-wide basis. The Exchange notes that although the semi-Auto-Ex function exists, it is not used at this time because the PSE believes that the full Auto-Ex function is better suited to members' needs (e.g., faster executions and price reports). See "Report of the Pacific Stock Exchange on the Status of its POETS Pilot Program," dated September 18, 1992 ("Pilot Report"). In semi-Auto-Ex, an order entered into ORS would be delivered to Book staff, who would call for a market in the particular options class and series. If a market maker bettered the market, Book staff would execute the trade with the market maker or allocate the trade among market makers. If no one in the crowd updated the displayed market quote, Book staff would execute the trade against the screen.

[12] See Pilot Approval Order, supra note 3. As the Commission noted in the Pilot Approval Order, if the PSE plans to increase the size of orders eligible for automatic execution above ten contracts, or plans to modify the types of orders that are eligible for automatic execution and/or other POETS' systems, the Exchange must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act.

[13] Any Exchange member who is a registered market maker acting in the capacity of either an individual market maker or a joint account participant is eligible to be logged onto Auto-Ex as a contra-broker.

[14] Under normal conditions, orders entered into Auto-Book via ORS and orders placed with an Order Book Official for manual entry into Auto-Book receive priority over other bids or offers at an inferior price. During fast market conditions, however, as determined by the Chairman of the Exchange or his nominee, an order will not gain time priority until it is entered into the system. Once orders have been placed electronically into the system, book priority is maintained at all times under Auto-Book.

[15] See Pilot Report, supra note 11.

[16] See Pilot Report, supra note 11.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] 15 U.S.C. 78k–1 (1982).

[19] See Pilot Report, supra note 11.

[20] See Pilot Report, supra note 11. The Pilot Report states that as of August 1992, 7.20% of all trades were executed with the on-line Book.

execution on the Exchange floor, thereby providing an opportunity for increased efficiency in the handling of non-POETS orders, especially large orders where floor broker intervention is more likely to be necessary. In addition, the Commission believes that by automating the processing of market and limit orders, all parties to a trade have benefited from the enhanced accuracy and timeliness of the price reports and trade comparison process.

The Pilot Report states that Auto-Ex has enhanced the efficiency and accuracy of order execution on the PSE in that:

(1) Orders that are entered through ORS are executed instantaneously;

(2) The system produces a report which allows member firms to report a fill of an Auto-Ex order to the customer immediately after execution;

(3) An incoming order secures a guaranteed execution at the current disseminated quotation;

(4) Orders that are routed to the Book receive priority in execution over other incoming orders once their criteria for execution have been met; and

(5) Orders which are not eligible for execution through Auto-Ex are re-routed instantly to the designated default location for immediate handling.

The Pilot Report finds that POETS has also enhanced the efficiency of order execution for manual orders in that: (1) Price reporting and some trade matching are performed electronically by the system upon execution of an order, so that all customers receive faster and more accurate price reports; (2) because POETS reduces the paper flow in trading crowds, larger orders that must be executed manually receive greater attention by staff and traders; and (3) problems in trade matching can be discovered and remedied more quickly, thereby reducing the market risk to member firms if price adjustments are necessary. The PSE notes that the reduction in paper flow for small orders also provides for more efficient order execution in fast markets.[21]

In sum, the Commission believes that the enhanced efficiency of order processing resulting from POETS, together with the immediacy and certainty of order execution obtained through AutoEx, has strengthened the PSE's markets and provides resulting benefits to market participants. The Commission also believes that the system's automated order routing has enhanced the accuracy of the PSE's audit trail, thereby helping to increase the effectiveness of the Exchange's surveillance procedures in detecting trading abuses on the Exchange's options floor.

In this regard, the Commission believes that POETS has provided the Exchange's Market Surveillance Department with more accurate trade information. Specifically, the Pilot Report indicates that POETS provides the Exchange's Surveillance Department with faster, more accurate, and more complete trade information than was available previously, thereby allowing the Exchange to develop more accurate and timely audit trails. In addition, because the system provides the time-stamp when an order is executed, the risk of human error is reduced and the Exchange's Time and Sales Reports are faster and more accurate. In addition, POETS generates information on market conditions that appear in the Exchange's Times and Sales Reports, thereby allowing the Times and Sales Reports to provide a more realistic picture of the trading environment at the time a transaction occurred.[22]

As the Commission stated in its Pilot Approval Order, the Commission has recommended that options exchanges ensure that their automated systems remain operational during periods of market volatility and volume surges, as well as during normal periods. To this end, the PSE originally developed the POETS system assuming a capacity requirement consistent with "record" PSE volume.[23] The Commission notes that as of August 1992, the PSE has indicated that the year-to-date availability of POETS was 99.96%,[24] and that there have been no significant system outages or failures since that time.[25]

In addition to operational concerns associated with automated execution systems, the Commission has recommended that the self-regulatory organizations take steps to ensure adequate market maker participation in their systems. As the Commission found in its Pilot Approval Order, the PSE has designed POETS so that it will be operational at all times after opening rotation, except for rate exceptional circumstances. First, the system has built-in market maker participation, in that the market makers are the system's contra-brokers, unless the Book or crowd quote represents the displayed quote. Second, the PSE has imposed requirements to ensure adequate market maker participation. In particular, any market maker logging onto the system for a particular options class during an expiration month must log onto the system in that options class whenever he is in the trading crowd, until the next expiration. In addition, if at any time there is inadequate participation in a particular options class, the OFTC may require market makers who are members of a trading crowd to log onto Auto-Ex absent reasonable justification or excuse for non-participation. The Exchange may pursue either disciplinary or remedial action against any member who fails to comply with these requirements.[26]

Finally, the Commission notes that the PSE has received no formal complaints in connection with POETS, and has taken no disciplinary action against a member for activities involving the system.[27]

IV. Conclusion

Based upon the PSE's experience with the pilot program, the Commission believes that POETs has provided significant benefits to the Exchange's public customers and has enhanced the efficiency of the PSE's options markets. For the reasons stated above, the Commission believes that the proposal to grant permanent approval to POETS is consistent with the requirements of Sections 6 and 11A of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[28] that the proposal (File No. SR–PSE–92–37) to grant permanent approval to POETS is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18860 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

[21] See Pilot Report, supra note 11.

[22] See Pilot Report, supra note 11.

[23] See Pilot Approval Order, supra note 3.

[24] See Pilot Report, supra note 11.

[25] Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulations, PSE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission on July 28, 1993 ("July 28 Telephone Conversation").

[26] See Pilot Approval Order, supra note 3.

[27] See July 28 Telephone Conversation, supra note 25.

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] 17 CFR 200.30–3(a)(12) (1992).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decision and Orders in Civil Penalty Actions; Publications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the subject matter index, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: Telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90–12/31/90	56 FR 44886; 2/6/91
1/1/91–3/31/91 ...	56 FR 20250; 5/2/91
4/1/91–6/30/91 ...	56 FR 31984; 7/12/91
7/1/91–9/30/91 ...	56 FR 51735; 10/15/91
10/1/91–12/31/91	57 FR 2299; 1/21/92
1/1/92–3/31/92 ...	57 FR 12359; 4/9/92
4/1/92–6/30/92 ...	57 FR 32825; 7/23/92
7/1/92–9/30/92 ...	57 FR 48255; 10/22/92
10/1/92–12/31/92	58 FR 5044; 1/19/93
1/1/93–3/31/93 ...	58 FR 21199; 4/19/93

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

As noted at the beginning of the subject matter index and the digests, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

In addition, the Administrator's final decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

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93–21	Delta Air Lines.
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93–22	Katherine M. Yannotone.
(6/25/93)	CP91CE0201.

Civil Penalty Actions—Decisions Issued By the Administrator

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(Current as of June 30, 1993)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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Digests

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1993, through June 30, 1993. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

Civil Penalty Case Decisions

Digests

(Current as of June 30, 1993)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Mark Brown

Order No. 93–15 (4/21/93)

Withdrawal of Appeal. Respondent withdrew his notice of appeal from the initial decision. Respondent's appeal is dismissed.

In the Matter of Millon Air, Inc.

Order No. 93–16 (4/30/93)

Withdrawal of Appeal. Complainant has withdrawn its appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Burton D. Metcalf

Order No. 93–17 (6/10/93)

Low Flight Violation Affirmed. The Administrator affirmed the law judge's decision finding that Respondent operated a helicopter carelessly or recklessly when it hovered at 30 to 40 feet above ground level (AGL) near persons on the ground. If Respondent did not know that there were persons underneath the helicopter, he should have. As pilot in command of the helicopter, he was responsible for its operation and safety. Before hovering at low altitudes, Respondent should have ensured that there were no persons under the helicopter.

Credibility Determinations. Though not bound by the credibility determinations of the law judge, the Administrator found no persuasive reason for disturbing them. Law judges are in the best position to evaluate the demeanor of witnesses in administrative proceedings.

Expert Testimony. The testimony of the FAA expert witness that Respondent could not have made an emergency landing without undue hazard to persons if his power unit had failed while hovering 30 to 40 feet AGL, was more persuasive than that of Respondent's expert witness. Respondent's expert witness assumed that the helicopter had hovered at higher altitudes than those found by the law judge.

Improper Courtroom Demeanor. Respondent's counsel should have call the law judge's attention to any matter in the courtroom that his witnesses may have found distracting. Law judges should avoid all conduct which could appear inappropriate in a courtroom.

In the Matter of Westair Commuter Airlines, Inc., d/b/a United Express

Order 93–18 (6/10/93)

Careless or Reckless Operation by Air Carrier. The Administrator affirmed the law judge's decision finding Respondent, an air carrier, responsible for the careless or reckless taxi operation of five of its aircraft by Respondent's mechanics. On three separate occasions mechanics, taxied aircraft onto runways without Air Traffic Control (ATC) clearance. The taxi operations were within the mechanics' scope of employment. Respondent was responsible for the acts of its employees committed while they were acting within the scope of their employment.

Operator Defined. Under the Federal Aviation Act of 1958, as amended, and the Federal Aviation Regulations, the person (individual or corporation) who authorizes the operation of aircraft is deemed to be engaged in operating aircraft. Respondent authorized its mechanics to use its aircraft for taxi operations. Respondent, as well as its mechanics, may be charged as the "person operating" the five aircraft under 14 CFR 91.13(b).

Weather As A Mitigating Factor. The mechanics knew that there was heavy fog when they began to taxi. The fog was not unexpected, and cannot be regarded as a mitigating factor.

Corrective Action As A Mitigating Factor. After the runway incursions, Respondent retrained its mechanics

throughout the country in taxi operations under revised procedures. The corrective action taken by Respondent was swift and comprehensive, and warrants mitigation of the sanction amount. The law judge did not consider the corrective action in arriving at the sanction amount. The Administrator reduced the civil penalty by $1,000, and assessed a total civil penalty of $2,000.

In the Matter of Pacific Sky Supply, Inc.

Order No. 93–19 (6/10/93)

Request for Oral Argument Denied. Complainant has failed to persuade the Administrator that oral argument is necessary to resolve its appeal.

Law Judge's Interpretation of the Regulation Rejected. The law judge held that to show a violation of the 14 CFR 21.303(a), Complainant must be able to show by a preponderance of the evidence that Respondent either: (1) Produced the parts with the specific intent of having them installed on type-certificated products; or (2) had actual knowledge that the parts would be installed on type-certificated products. The Administrator stated that the law judge interpreted the regulation far too narrowly. In doing so, he created a loophole for producers who sell to "middlemen."

Complainant's "Reasonably Likely" Standard Rejected. Complainant's interpretation of the intent requirement of the regulation is that Complainant must prove that a reasonable person would find it reasonably likely that the parts would be installed on type-certificated products. Complainant's formulation is rejected.

"Substantial Certainty" Standard Announced. Complainant must show that Respondent knew or should have known that it was substantially certain that the parts produced by Respondent without a Parts Manufacturer Approval (PMA) would be installed on type-certificated products. This is a somewhat more difficult burden to meet than Complainant's reasonably likely standard. It more appropriately balances the equities involved—the FAA's duty to promote aviation safety by controlling the spread of unapproved parts, and the producer's right to produce parts without FAA approval when it is insufficiently probably that the parts will find their way into type-certificated aircraft.

In the Matter of Douglas Vernon Smith

Order No. 93–20 (6/16/93)

Dismissal of Appeal. Respondent failed to perfect his appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 93–21 (6/24/93)

Withdrawal of Appeal. Respondent withdrew its notice of appeal from the initial decision. Respondent's appeal is dismissed.

In the Matter of Katherine M. Yannotone

Order No. 93–22 (6/25/93)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the law judge's order. Complainant's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Avlex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106, (301) 798–1098

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483, is placing the decisions on CD–ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and Genie.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267–3641

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma CIty, OK 73125; (405) 680–3296

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270

Issued in Washington, DC, on July 29, 1993.

Mark L. Gerchick,

Chief Counsel.

[FR Doc. 93–18852 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering and Development (R, E&D) Advisory Committee to be held Tuesday, August 24, 1993, at 10 a.m. The meeting will take place at the Holiday Inn Capitol, 550 C Street, SW., Washington, D. 20024.

In addition to the reviewing the status of various ongoing committee activities, the agenda will include:

(a) An update of FAA's surveillance program;

(b) An overview of the issues to be addressed by FAA at the upcoming ICAO FANS Meeting;

(c) Status of the RTCA Task Force II activities related to data link; and

(d) Introduction of new tasks involving airport investment criteria and land use initiatives.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R, E&D Advisory Committee, ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 287–8543.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 2, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 93–18846 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at New Orleans International Airport, New Orleans, LA

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 use the revenue from a PFC at New Orleans International 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 September 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Edward Levell, Jr., of the New Orleans International Airport at the following address: Director of Aviation, New Orleans International Airport, P.O. Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the New Orleans International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

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 use the revenue from a PFC at New Orleans International 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 July 21, 1993, the FAA determined that the application to use the revenue from a PFC submitted by New Orleans International Airport 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 18, 1993.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: June 1, 1993.

Estimated charge expiration date: April 1, 2000.

Total approved net PFC revenue: $77,800,372.00.

Brief description of use-only project(s): Projects to impose and use PFC's: Land Acquisition and Construction of East/West Taxiway North General Aviation Road, East Air Cargo Access Road

Class of air carriers exempted from collecting PFC's: FAR part 135 on-demand air taxi/commerical operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at New Orleans International Airport.

Issued in Fort Worth, Texas on July 21, 1993.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 93–18845 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Shreveport Regional Airport, Shreveport, LA

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 a PFC at Shreveport 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 September 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy H. Miller, Jr., of the Shreveport Airport Authority at the following address: Director of Airports, Shreveport Regional Airport, 5103 Hollywood Avenue, Suite 300, Shreveport, LA 71109–7764.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Shreveport Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

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 a PFC at Shreveport 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 July 21, 1993, the FAA determined that the application to impose a PFC submitted by the Shreveport Regional Airport 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 17, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1993.

Proposed charge expiration date: September 30, 2018.

Total estimated PFC revenue: $33,337,210.00.

Brief description of proposed project(s): Projects to impose PFC's: Renovate Passenger Terminal at Shreveport Regional Airport Proposed class or classes of air carriers to be exempted from collecting PFC's:

All non-scheduled FAR part 135 air taxi operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch, ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may upon request, inspect the application, notice and other documents germane to the application in person at the Shreveport Regional Airport.

Issued in Fort Worth, Texas on July 21, 1993.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 93–18850 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Tulsa International Airport, Tulsa, OK

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 use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brent A. Kitchen of the Tulsa International Airport at the following address: Tulsa Airports Improvement Trust, 7777 East Apache, Tulsa, OK 74115.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Tulsa International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule invites public comment on the application to use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 26, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tulsa International Airport 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 20, 1993.

The following is a brief overview of the application.

Level of PFC: $3.00.

Charge effective date: August 1, 1992.

Charge expiration date: July 31, 1995.

Total PFC revenue: $9,717,000.00.

Brief description of proposed project(s):

Projects to Use PFC's

Emergency Communications Equipment
Acquire ARFF Vehicle
Reconstruct Taxiway Alpha Holding Apron and Taxiway Delta
Construct Taxiway X-Ray (Phase 2, Part 2)
Construct ARFF Building
Extend Taxiway Juliet
Reconstruct and Realign Taxiway Whiskey

Class of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTRACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tulsa International Airport. Issued in Fort Worth, Texas on July 26, 1993.

John M. Dempsey,

Airports Division.

[FR Doc. 93–18851 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: 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 13359, 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, "Korean Arts of the Eighteenth Century Splendor and Simplicity" (see list [1]), imported from

[1] A copy of this list may be obtained by contacting Ms. Cornelia Sheahan of the Office of the General Counsel of USIA. The telephone number is

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 lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asia Society, New York, New York, from on or about October 1, 1993, to on or about January 2, 1994; the Arthur M. Sackler Gallery, Washington, DC, from on or about February 20, 1994 to on or about May 15, 1994; and the Los Angeles Museum of Art, Los Angeles, California, from on or about June 16, 1994 to on or about August 21, 1994, is in the national interest.

Pubic notice of this determination is ordered to be published in the Federal Register.

Dated: July 29, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–18820 Filed 8–5–93; 8:45 am]

BILLING CODE 8230–01–M

American Civilization Workshop/ Seminar and Research Grants in the People's Republic of China

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational institutions to: (A) Conduct workshops and seminars in the People's Republic of China, (B) administer programs to conduct research in the People's Republic of China in areas which contribute to mutual understanding between the United States and the People's Republic of China. Applications may request funds for either or both of the above programs. All program support is subject to the availability of funding.

Successful applicants are responsible for administration of tax withholding and reporting as required by Federal, State and local authorities.

Support is offered for two categories of institutional programs: Category A, Workshops/Seminars; Category B, Research. Each category has separate conditions and requirements, which are stated in this announcement. Institutions requesting funds for both categories may submit one application comprising the total request. However, each category must be described in a separate narrative and must have a separate, detailed budget. Institutions applying under either or both categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible.

Programs and projects must conform with all Agency requirements and guidelines as well, and are subject to final review by a USIA contracting officer.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. EST on Friday, October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on the deadline date but received at a later date.

It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. Programs may not begin prior to October 1, 1993, or they will be deemed technically ineligible. No funds may be incurred until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Ref: The People's Republic of China Grants Competition, Office of Grants Management, E/XE, room 336, 301 4th Street, SW. Washington, DC 20547.

FOR FURTHER INFORMATION: Contact: William Shine, room 238, E/AEF, 301 4th Street, SW., Washington, DC 20547, *FAX: 202–401–1728,* for application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Requests via Fax are encouraged.

SUPPLEMENTARY INFORMATION: Authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A

Workshops/Seminars

Grant funding under this category is intended to enhance and expand the scope of social sciences and humanities programs in American Society and Culture in the People's Republic of China. $80,000 is available for this category. Specific disciplines for the FY 1994 competition are: Higher Education Administration, University Library Management (with an emphasis upon collections in American Studies fields such as literature and history) and programs in Government and/or American Law. Intense, scholarly 3–4 week summer programs are particularly encouraged. Individual participants on the American side must be citizens of the U.S. Both existing and new projects are eligible.

Duration: Applications will be accepted for projects from at least 15 days to no more than 30 days duration. Programs may not begin earlier than October 1, 1993 and should be completed by September 30, 1993.

Overview: The overall purpose of this program is to provide opportunities for U.S. educational institutions to conduct scholarly workshops/seminars in the People's Republic of China in fields such as Higher Education Administration, University-level Library Science, American Law and American Government and thereby give the opportunity for Chinese institutions to offer their members access to recent information and perspectives in American Civilization disciplines as well as to allow for the substantive exchange of ideas. Workshops/seminars should take place in one Chinese city. American organizations are encouraged, however, to purpose programs that would include participants from a variety of Chinese institutions from across the People's Republic of China. A workshop on the American judicial process, for example, could include law professors, students, as well as legal officials. Applicants should specify the workshop length and venue, the intended audience, the audience's level of sophistication, e.g., faculty, graduate

202/619–5077, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

students, researchers, government officials, and whether there would be any co-sponsor.

Guidelines: Preference will be given to organizations with demonstrated expertise in the proposed workshop/seminar fields. Previous experience with conducting scholarly seminars in the People's Republic of China and/or current working relations with Chinese educational institutions will be considered a plus. A substantive history of organizing subject-specific programs led by acknowledged experts in the field who also have considerable teaching experience is highly advantageous. Proposals should present a very clearly designed program plan that enunciates specific objectives and that demonstrate the likelihood of substantive follow-through. Be specific as to what issues the workshop/seminar will address and who the intended audience is. In the context of the intended audience(s), please describe clearly the proposed approach, e.g., didactic, participatory, etc.

Proposed Budget Category A

Projects: Project awards to U.S. institutions for Category A can be made in a range of amounts but will not exceed $75,000. The Agency reserves the right to reduce, revise or increase budgets. For organizations with less than four years of experience in international exchange activities, total grants (Categories A and B) will be limited to a maximum of $60,000 from USIA, and total proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

Please Note: It is required that requested administrative funds not exceed 20 percent of the amount requested for travel and per diem expenses. This includes both direct and indirect administrative expenses; expenses both administrative and programmatic should be cost-shared to the maximum extent possible.

Category B

Research

Grant funding under this category is intended to enhance and expand the scope of U.S. scholarly research in the People's Republic of China in social sciences or humanities fields. Such research should assist in promoting mutual understanding between the U.S. and the People's Republic of China. A minimum of $150,000 will be available for this category. Research should be focused on contemporary or, at least Twentieth Century, projects. Research focusing on areas such as law; economics, with an emphasis upon the developing market economy in the People's Republic of China and its implications for both Sino-American and regional economic cooperation; and the social and political consequences of greater access to mass media, communications systems and information technology are especially encouraged. An excellent working knowledge of Chinese is required for any work involving comparative studies. The grantee institution is responsible for verifying knowledge of Chinese when required by the research project.

Overview: The short-term objective of a research grant would be to give institutionally-sponsored scholars the opportunity to explore current and recent trends in his or her area of expertise in the People's Republic of China. The longer-term goal is to encourage and maintain a scholarly dialogue based upon active research and the exchange of research information.

Guidelines: A Category B grant will be for educational institutions which provide a publicly announced, open competition selection process for choosing the recipients of individual research grants.

The proposal should include the criteria for and the mechanics of the actual selection process. Individual grantees should be experienced researchers holding a doctorate (Ph.D., Ed.D., J.D) in his or her field of expertise. The successful individual recipient would present a careful research design, preferably related to an on-going research project in which the grantee is currently involved. Preference should be given to candidates whose research would enhance the exchange of substantive knowledge in his or her discipline between scholars in the People's Republic of China and the United States.

Duration: Research projects should be for a minimum of three months duration. Grants will generally be made for exchanges occurring within a 12-month period.

Allowable Costs for Category B

Projects: While grants are likely to involve a wide range of amounts depending on the duration of the stay, cost per participant may not exceed $50,000, including administrative costs. All institutions/organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of East Asian and Pacific Affairs, the USIA section of the American Embassy in Beijing, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. *Quality of Program Plan*—Including academic rigor, thorough conception of project, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. *Feasibility of Program Plan*—Capacity of the organization to conduct the exchange; proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. *Track Record*—Relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. *Multiplier Effect/Impact*—The impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity to promoting mutual understanding.

e. *Value to U.S.–PRC Relations*—The assessment of the need, potential impact, and significance of the project with the PRC.

f. *Cost Effectiveness*—The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

g. *Institutional Capacity*—Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

h. *Follow-on-Activities*—Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

i. *Evaluation Plan*—Proposals should provide a plan for evaluation by the grantee institution and by individual participants in categories B.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 29, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: July 30, 1993.

Barry Fulton,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 93–18777 Filed 8–5–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 12, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Shirel & Guess, employed by Pyro Mining Co.*, Docket No. KENT 92–73, etc. (Issues include whether the judge erred dismissing this proceeding brought against Shirel & Guess under 30 U.S.C. § 820(c) on the basis that their employer was a partnership.)

2. *American Mine Services, Inc.*, Docket No. WEST 91–563, etc. (Issues include whether the judge erred in finding that the mine operator's violation of 30 CFR 75.1400–3 was not a result of its unwarrantable failure to comply with the safety standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: August 3, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–19000 Filed 8–4–93; 2:09 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 11, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interagency policy statement regarding branch closings by depository institutions.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement section 142 of the Federal Deposit Insurance Corporation Act of 1991 regarding limits on discount window advances.

3. Proposal under the Board's Payments System Risk Reduction Policy regarding daylight overdraft penalty fee for bankers' banks, Edge corporations, and limited purpose trust companies. (Proposed earlier for public comment; Docket No. R-0693)

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 4, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–18979 Filed 8–4–93; 12:55 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, August 11, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1 Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-18980 Filed 8-4-93; 12:55 am]

BILLING CODE 6210-01-P

federal register

Friday
August 6, 1993

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Small Airplane Airworthiness Review Program Amendment No. 4; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26269; Amendment No. 23–45]

RIN 2120–AD20

Small Airplane Airworthiness Review Program Amendment No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes airframe and flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. The changes are based on a number of recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These updated safety standards will continue to provide an acceptable level of safety in the design requirements for small airplanes used in both private and commercial operations. Some of the changes provide design requirements applicable to advancements in technology being incorporated in current designs. This amendment will also reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1990, the FAA issued a notice of proposed rulemaking (NPRM) that proposed changes to the airframe and flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes (Notice No. 90–18, 55 FR 26534, June 28, 1990). The FAA based the proposed changes on the Small Airplane Airworthiness Review Program and on the conference that resulted in recommendation based on review proposals.

History

To encourage public participation in improving and updating the airworthiness standards applicable to small airplanes, the FAA announced the Small Airplane Airworthiness Review Program on January 31, 1983, and invited all interested persons to submit proposals for changes to part 23.

By the close of the proposal period on May 3, 1984, the FAA had received more than 560 proposals. On October 22–26, 1984, the FAA held the Small Airplane Airworthiness Review Program Conference in St. Louis, Missouri. The conference was attended by over 300 persons representing all aspects of the U.S. small airplane industry as well as many international representatives. A copy of the transcripts of all discussions held during the conference is filed in FAA Regulatory Docket 23494.

After reviewing the proposals and the public comments received at the conference, the FAA issued a number of rulemaking documents. These include:

(1) A notice proposing to upgrade cabin safety and occupant protection standards during emergency landing conditions (Notice 86–19, 51 FR 44878, December 12, 1986), which led to amendment 23–36 (53 FR 30802, August 15, 1988).

(2) A notice proposing airworthiness standards for advanced technology in current airplane design (Notice 89–5, 54 FR 9276, March 6, 1989), which led to amendment 23–42 (56 FR 344, January 3, 1991).

(3) A notice proposing airworthiness standards for complex systems critical for safety in small airplanes (Notice 89–6, 54 FR 9338, March 6, 1989), which led to amendment 23–41 (55 FR 43306, October 26, 1990).

(4) A notice of proposed airworthiness standards for powerplant and equipment not included in the above three notices (Notice 90–23, 55 FR 40598, October 3, 1990), which led to Amendment 23–43 entitled Small Airplane Airworthiness Review Program Amendment No. 3 (58 FR 18958, April 9, 1993).

The review program and conference also led to the proposal for this rulemaking action, which updates the airframe and flight airworthiness standards for small airplanes.

The FAA is participating in an important international effort to harmonize part 23 of the Federal Aviation Regulations (FAR) with the Joint Aviation Requirements (JAR) developed by representatives of the Joint Aviation Authorities (JAA). This final rule is a significant step in the harmonization effort, which is being encouraged and supported by the aviation community worldwide.

Discussion of Comments

General

Interested persons were invited to participate in the development of this final rule by submitting written data, views, or arguments to the regulatory docket. Eight commenters responded to Notice No. 90–18. Commenters represent U.S. manufacturers of small aircraft (General Aviation Manufacturers Association, GAMA), Joint Aviation Authorities, JAA, individual airworthiness authorities (United Kingdom, Australia, Transport Canada), the Air Line Pilots Association (ALPA), a representative of the Association of Europeene des Constructeures des Material Aerospatial (AECMA), and one private individual. Most commenters either endorse other comments or comment on only a few of the proposed changes. GAMA comments on a significant number of the proposed changes and JAA comments on virtually every proposed change. AECMA submitted a one-sentence comment endorsing the GAMA comment.

One commenter (ALPA), while supporting "the fundamental intent" of the NPRM and applauding "The FAA for the work and progress" from the 1984 conference, also states a belief that there is a need for a "single regulation to prescribe that all part 25 certification aircraft are used by scheduled commercial airlines."

In general, the commenters agree with the proposed changes and one commenter (GAMA) urges the FAA to issue a final rule as expeditiously as possible.

In the NPRM, the FAA specifically solicited comments on the following subjects:

Conference Proposal 2, § 23.3, Permit installation of turboject engines on commuter category airplanes.

Conference Proposal 7, § 23.65, Require performance limitations based on weight, altitude and temperature.

Conference Proposal 10, § 23.145, Establish control force limits for reduced pilot strength, and

Conference Proposal 29, § 23.307, Require material correction factors during structural tests.

The first two subjects listed above are subjects on which the FAA solicited comments for future rulemaking. No final action is taken in this rulemaking on these two subjects. The discussion of comments on these two subjects follows the proposal-by-proposal discussion at the end of the supplementary information section of this preamble. The second two subjects relate to rulemaking proposal number 10 (§ 23.145) and rulemaking proposal 29 (§ 23.307). Discussion of comments for these subjects is contained in the proposal-by-proposal discussion.

Discussion of Comments on Specific Sections of Part 23

As stated above, the majority of the specific comments were received from the GAMA and the JAA. In the following proposal-by-proposal discussion, the basic intent of each proposed change is summarized and substantive comments are addressed individually. Comments and changes of an editorial nature are generally omitted from the discussion.

In this final rule, the FAA has withdrawn a total of three proposals from the NPRM and is amending (for clarification) two sections for which changes were not proposed in the NPRM. The withdrawal of some proposed amendments and the addition of amendments that were not proposed has created a mismatch between the proposal numbers as discussed in this preamble and the amendment numbers included in the amendatory portion of this final rule. The following table provides the necessary cross reference:

Proposal No.	Amendment No.
1–28	1–28.
29	Not Adopted.
30–47	29–46.
No proposal	47 & 48.
48–67	49–68.
68	Not Adopted.
69–72	69–72.
73	Not Adopted.
74–83	73–82.

Proposal 1

This proposal contained the authority citation for part 23, for which there was no change.

Proposal 2

The FAA proposed a change to § 23.23 that specified the limits for load distribution for weight and balance considerations. The one comment (JAA) received generally agrees with the proposed change but does not agree that the specific reference to lateral center of gravity (c.g.) range limits should be deleted. Also, the JAA does not believe (1) that the proposal treats lateral c.g. consistently and (2) that there is a need for all of the required flight test evaluation with displaced lateral c.g. limits. The JAA notes that requiring all testing to be repeated with fuel asymmetry is unnecessary and impractical but that it would be appropriate to take fuel asymmetry into account for some tests such as minimum control speeds, stall handling, and lateral stability.

The FAA agrees that deleting specific references to lateral c.g. limits may not be appropriate and has revised § 23.23(a) to retain lateral load limits in the regulations. The FAA disagrees that the proposal treats lateral c.g. limits inconsistently. Repeating all testing with fuel asymmetry is unnecessary to find compliance. Accordingly, the FAA adopts § 23.23 with the change discussed above.

Proposal 3

The FAA proposed a change to § 23.25 to clarify the criteria used for assuming occupant weights in normal, commuter, utility, and acrobatic category airplanes. The proposed change would no longer permit the certification of normal category airplanes with seats placarded for occupants of less than 170 pounds. Seats limited to some lower weight by the placard installation will be referred to as "child seats" in the remainder of this discussion.

The GAMA and JAA commented on this proposal. The GAMA opposes deleting the provision that allows for the installation of child seats. The GAMA notes that existing provisions of § 23.25 allow the manufacturer to install child seats and establish proper loading provisions for the airplane. GAMA believes that deleting this provision would operationally limit future airplanes. The GAMA also notes that several unacceptable alternatives could result from the proposed deletion, such as carrying less fuel, installing fewer seats, and carrying less safety equipment. The GAMA feels that child seats in airplanes fulfill a consumer need. The GAMA does not agree with the FAA's statement in the NPRM that the lack of specific standards for child seats is appropriate justification for disallowing placarding of child seats. The GAMA states that seat rules can be changed to certify fixed child seats at selected weight limits.

The JAA states that it does not understand the FAA's reasoning for disallowing child seats in normal category airplanes.

The FAA reconsidered this proposal, based on these comments, and agrees that eliminating the approval of child seats in normal category airplanes is inappropriate. However, the FAA points out that future rulemaking to provide safe standards for child seats will be needed in view of changes to § 23.562 made by amendment 23–36 (53 FR 30802, August 15, 1988), which established a safety level for occupants with a nominal weight of 170 pounds.

Although the FAA will allow the installation of child seats, placarding pilot seats for occupants weighing less than 170 pounds or 190 pounds, depending upon airplane category, will not the be allowed because there is no reason to do so. Accordingly, a revision to § 23.25(a)(2) ensures that pilot seats are not placarded for a reduced weight.

The GAMA also pointed out that the minimum fuel requirement of "at least one-half hour" in § 23.25(a)(2)(i), which is a part of the requirement for computing the minimum or maximum weight, is inconsistent with the fuel requirements of part 91. Section 91.151, Fuel requirements for flight in VFR conditions, requires 30 minutes of fuel reserve for day operations and 45 minutes of fuel reserve for night operations. Also, § 91.167, Fuel requirements for flight in IFR conditions, requires the airplane to have enough fuel to: (1) Reach its intended destination; (2) fly to an alternate destination, if required; and (3) allow 45 minutes of further flight at normal cruising speed.

Section 23.25(a)(2)(i) requires the pilot to have all seats occupied, engine oil at full capacity, and enough fuel for continued flight and a safe landing. The 45-minute fuel reserve, required by the operating rules, exceeds the § 23.25(a)(2)(i) fuel requirement of "at least one-half hour." Proposed § 23.25(a)(2)(i) is, therefore, revised to "at least 45 minutes for night VFR and IFR approved airplanes." The FAA adopts § 23.25 with the changes discussed above.

Proposal 4

The FAA proposed to change § 23.33 by adding propeller speed and pitch limits for turbine engine/propeller combinations and other requirements applicable to turbopropeller-powered airplanes not covered by the present rule.

The FAA received comments from the JAA and the GAMA. Both commenters questioned the need to add requirements for turbopropeller-powered airplanes (proposed paragraphs (b)(1)(ii) and (b)(2)(ii)) since it is unlikely that a fixed-pitch propeller will be used on a turbine-powered engine.

The FAA has re-examined these proposals and determined that proposed paragraphs (b)(1)(ii) and (b)(2)(ii) are not necessary.

The GAMA states that the proposal for § 23.33(d)(2)(ii) will allow a 2,700 r.p.m. engine to operate at 2,940 r.p.m., or higher, if the governor should fail and that this change does not appear to be in the interest of safety. The FAA is not making any change to the proposed requirement because the information contained in the comment is insufficient. The NPRM documents that there are usually two governors in an

engine/propeller system, one controlling the propeller rotational speed and one controlling the overspeed of the turbine engine. This explanation notes that if the propeller governor fails, the overspeed limit will be established by the turbine governor and probably will be 106 to 108 percent. The condition identified by the GAMA is nearly the same as the condition identified in the notice (2,940 r.p.m. is a 108.9 percent overspeed of 2,700 r.p.m.). The GAMA appears to support proposed § 23.33(d)(2)(ii) that would have required a means to limit the engine overspeed to 99 percent of the approved engine overspeed.

The FAA recognizes that a fuel control governor usually controls turbine engine overspeed. Any required margin (such as the proposed 1 percent) would be considered during the establishment of the approved overspeed. Accordingly, it burdens the applicant to require an additional device that arbitrarily limits overspeed to 99 percent. By removing the 99 percent requirement, § 23.33(d)(2)(ii) allows full approved overspeed. The FAA adopts § 23.33 with the changes discussed above.

Proposal 5

The FAA proposed to clarify the performance data requirements of § 23.45 and to combine the requirements for reciprocating and turbine-engine-powered airplanes. Since the one comment received from the JAA agreed with the proposed change, the FAA amends § 23.45 as proposed.

Proposal 6

The FAA proposed to change § 23.53 to introduce a rotation speed, V_R, for multiengine airplanes and to eliminate reference V_X (speed for the best angle of climb) for airspeeds at 50 feet. The FAA received comments on this proposal from the JAA and the GAMA.

The JAA notes that the reference to 1.3 V_{S1} (stalling speed or minimum steady flight speed in a specific configuration) in proposed §§ 23.53 (b)(1)(ii) and (b)(2)(ii) is unnecessary and suggest clearer wording for the proposed change. The proposed language that states, "not less than 1.2 V_{S1}," establishes the minimum V_{S1} speed that must be reached by a height of 50 feet above the takeoff surface. The JAA recommends revising the language to read, "1.2 V_{S1}, or any other speed shown to be safe * * *." The FAA rejects this suggestion because it would allow the use of a speed below 1.2 V_{S1}, which the FAA considers the minimum acceptable margin above the stall speed at the 50 foot point.

The GAMA recommends deleting the words "including turbulence" in proposed § 23.53 (b)(1)(ii) and (b)(2)(ii). The GAMA believes that considering turbulence deviates from the intent of the general requirement of § 23.45 that requires still air performance corrections in a standard atmosphere.

The commenter is partly correct. Most of the performance testing can be done in still air under standard atmospheric conditions, but some tests need to be done under other conditions. Thus, § 23.53 requires turbulent conditions for some, but not all, testing to find safe minimum takeoff speeds. Accordingly, these words are not being deleted from § 23.53 (b)(1)(ii) and (b)(2)((ii).

The GAMA also asks why turbulence is considered for normal, utility, and acrobatic category airplanes and not for commuter category airplanes.

The GAMA is correct that the takeoff speed requirements in § 23.53(c) for commuter category do not specifically address turbulence. However, other requirements applicable to commuter category, such as § 23.45(f)(3), that, in part, address critical-engine-inoperative takeoff performance require this performance to be determined according to the procedures established by the applicant for the operation in service, including turbulence conditions. Therefore, since turbulence for commenter category airplanes is otherwise addressed it has not been nor does it need to be included in § 23.53.

In addition, the FAA has noted that the proposed paragraph § 23.53(a) was not clear in distinguishing between the proposed V_R speed and the V_R speed established by § 23.53(c)(4) for commuter category airplanes. An editorial change to § 23.53(a) clarifies that § 23.53(a) applies only to normal, utility, and acrobatic category airplanes, not to commuter category airplanes. The FAA Adopts § 23.53 with the changes discussed above.

Proposal 7

The FAA proposed to delete from § 23.65 the current rate-of-climb requirements and to specify a minimum speed at which the angle-of-climb criteria must be met. The FAA received comments on this proposal from the JAA, GAMA, and ALPA. As previously discussed, the portion of the JAA, GAMA, and ALPA comments that addresses the subject of weight, altitude, and temperature (WAT) requirements for part 23 airplanes is discussed following this proposal-by-proposal discussion.

The GAMA states that the FAA has not justified the proposed change to § 23.65(a)(1) for a minimum all-engine-climb speed of 1.2 V_{S1} and that this restriction appears unnecessary because V_X is usually greater than 1.2 V_{S1}. GAMA notes that, if V_X is lower, any questions resulting from attitude and engine failure can easily be dealt with in the flying quality rules.

The JAA believes that the proposed minimum climb speed of 1.2 V_{S1} (stall speed or minimum steady flight speed obtained in a specific configuration) offers an inadequate stall speed margin for an everyday all-engines-operating case and recommends not less than 1.2 V_{MC} (minimum control speed with critical engine inoperative) or 1.3 V_{S1}. The GAMA states that the FAA has not justified the proposed minimum all-engine-climb speed of 1.2 V_{S1}.

As presented in the NPRM, the FAA finds that 1.2 V_{S1} is an improvement in the minimum performance standards. Deleting climb rate requires considering a minimum speed to ensure an adequate margin between stall speed V_S and the selected climb speed. If V_X is usually greater than 1.2 V_{S1}, as the GAMA states, then rule compliance is not a burden. If V_X is lower than 1.2 V_{S1}, then V_X provides an insufficient margin with stall speed which cannot be dealt with in the flying quality rules. This position is supported by another commenter. The FAA concludes that 1.2 V_{S1} is adequate and that a V_{MC} based requirement is unnecessary. The FAA adopts § 23.65 as proposed.

Proposal 8

The FAA proposed to change § 23.141 to clarify the general requirements for flight characteristics.

The one commenter (JAA) agrees with the proposal but suggests some changes for the paragraph. The first is to insert the phrase "at all practical loading conditions" so that the section will read "through § 23.253 at all practical loading conditions, at all practical operating altitudes."

The FAA notes that the current evaluation of an airplane's flight characteristics must consider all practical loading conditions in accordance with § 23.21. This addition does not add a requirement to flight characteristic testing and does clarify the requirement. The final rule paragraph adds this phrase.

The other suggested change proposes to add a phrase between "under § 23.1527" and "without exceptional piloting skill," which reads, "for which certification has been requested." The FAA agrees and has added the phrase to the final rule. The phrase clarifies that the loading condition and altitudes, checked during the flight characteristics evaluation, are those conditions and

altitudes requested by the applicant for approval. The FAA adopts § 23.141 with the changes discussed above.

Proposal 9

The FAA proposed to change § 23.143 by replacing the word "Dive" with the word "Descent" because descent more accurately reflects the total phase of flight. No one commented on this proposed change, and the FAA adopts the change to § 23.143 as proposed.

Some comments received on § 23.145 resulted in revisions to the table in § 23.143(c). These comments are discussed in the discussion of § 23.145.

Proposal 10

The FAA proposed to change § 23.145 to correct an error created by amendment 23–21 and to correct the trim speeds and procedures.

Although the FAA received no comments on paragraph (a) of § 23.145, the FAA notes that "the airplanes as nearly as possible in trim at 1.3 V_{SI}" is a condition specified for both maximum continuous power and power off in § 23.145 (a)(1) and (a)(2). To eliminate redundancy, the FAA moved these words in the final rule to the introductory text of § 23.145(a).

The JAA and the GAMA commented on § 23.145 (b), (c), and (d). The GAMA believes that the one-hand control force of 50 pounds in proposed § 23.145(b) is too stringent but does not provide any further recommendations. The NPRM proposal discusses the reasons for selecting the particular control force and the control force is retained as proposed.

The GAMA also suggested deleting the 50-pound control force in § 23.145(b) or moving it to the table in § 23.145(c). The FAA agrees with the suggestion that the one-hand control force for the wheel should be located in the table in § 23.143(c). This table contains other forces for the control wheel, stick, and rudder pedals. It is appropriate to add this one-hand control force to the table.

The JAA provides extensive comments on § 23.145(b). First, the JAA asks to what the 50-pound control force limit of § 23.145(b) applies. The JAA believes that this force should include any initial out-of-trim force and the change of control force that occurs during the variations in flight conditions. As proposed by the FAA, this requirement does not determine the total control force in the airplane during the maneuvers specified in § 23.145, paragraph (b)(1) through (b)(5). The one-hand control force test verifies that the changing control forces, during the maneuver, do not become higher than the pilot can safely control. The FAA specifies a one-hand control force because, during the maneuvers, the pilot is using one hand to change the power settings or flap positions. Only one hand will be available to correct the resulting control force changes. Accordingly, the requirement for the airplane control force is not limited to a total of 50 pounds, as the JAA advocates. The requirement allows force to be the sum of the initial out-of-trim force plus the allowed 50 pounds to correct the maneuver. In practice, the total control force on the airplane depends upon the direction of the pilot force and the direction of the initial out-of-trim force. The out-of-trim forces may add (or subtract) to the 50-pound force limit.

The JAA also recommends deleting the words "the gear extended" from § 23.145(b) since the demonstration required by paragraph (b)(3) and (b)(4) are with gear retracted.

The FAA re-examined these requirements and agrees that the gear position requirements of § 23.145(b) conflict with § 23.145, paragraph (b)(3) and (b)(4). But, the FAA does not agree that the gear position requirement of § 23.145(b) should be deleted. It is necessary to specify the needed gear position in the maneuvers in § 23.145, paragraphs (b)(1) through (b)(5). To correct these requirements, the FAA removes the words "with the landing gear extended" from § 23.145(b) and adds this phase to § 23.145, paragraphs (b)(1) and (b)(2).

The JAA also believes that proposed § 23.145(b)(2)(i) fails to address properly a normal balked landing demonstration. First, the JAA notes that the proposed initial trim speed 1.2 V_{SO} (stalling speed or minimum steady flight speed in landing configuration) is below the final approach speed of 1.3 V_{SO}. Second, mishandled balked landings are covered in § 23.145(b)(2)(ii). Third, it is incorrect to require a speed abuse for the normal demonstration requirements.

The JAA also disagrees with the proposal to require the airplane to maintain the speed used to show compliance with § 23.77. The JAA's reasons for disagreeing are that § 23.77 provides requirements for the balked landing climb case, and it is inappropriate to correlate this climb condition to those for the balked landing demonstration of § 23.145(b)(2)(i), which recommends go-around settings. To support not using the speed of § 23.77, the JAA notes that it could be as low as 1.1 V_{SO}, which is not a realistic go-around speed with flaps partly retracted. The JAA recommends a speed of 1.3 V_{SO}.

Finally, the JAA disagrees with the reference to § 23.145(b)(1)(i) in proposed § 23.145(b)(2)(iii) because there should be no flap gate positions between fully extended and go-around flaps. The JAA agrees with giving credit for the flap gate positions in the mishandled balked landing requirements of § 23.145(b)(2)(ii), but questions the need to maintain a speed of 1.1 V_{SO}. The JAA believes that it is acceptable to retrim between each gate state of flap retraction and that it should be acceptable to allow the airplane to accelerate to 1.1 V_{SI}, where V_{SI} is the selected flap setting configuration.

The FAA has reviewed the proposal in light of the comments received on § 23.145(b) concerning airplane trim at 1.2 V_{SO} or 1.3 V_{SO} and agrees that an abuse speed of 1.2 V_{SO} for a normal balked landing is inappropriate. The final rule allows an abuse speed of 1.3 V_{SO} for a normal balked landing. However, the FAA considers an abuse speed 1.2 V_{SO} appropriate for a mishandled balked landing.

The FAA does not agree that it is inappropriate to correlate the balked landing climb in § 23.77 to the balked landing of § 23.145(b)(2)(i). The FAA has evaluated this and determined that a speed showing compliance with the balked landing climb is also safe for a wings level go-around flight. Changes to § 23.77 clarify that the balked landing speed is the minimum speed that must be maintained.

The last item related to § 23.145(b) is the comment on the credit given for gated flap positions. Upon re-examination of proposed § 23.145(b)(2)(iii), the FAA agrees with this comment. There should not be a flap gate position between the flap fully extended position and the go-around position. If one is provided, it should be bypassed so the go-around setting can be quickly attained. Permitting a gated position conflicts with § 23.145(b)(2)(i) in a normal balked landing. Section 23.145(b)(2)(i) requires the flaps to be retracted as quickly as possible to the go-around position. Section 23.145(b)(2)(iii) omits the provision for flap gate credit from the final rule.

As proposed, § 23.145(b)(2)(ii) would allow the use of flap gate positions for the mishandled balked landing demonstration requirements. The FAA agrees; therefore, it is acceptable to accelerate the airplane to 1.1 times the minimum steady flight speed. The final rule includes this provision.

The JAA concurs with § 23.145, paragraphs (b)(3), (b)(4), and (b)(5), and suggests moving § 23.145(b)(5) to § 23.175 and combining it with § 23.175(d). The FAA reviewed the

possibility of combining these two sections, which would require revisions in both. This could create unintended meanings, and since the recommended changes are beyond the scope of the notice, the FAA will consider this proposal for future rulemaking.

Both the GAMA and the JAA offer comments on proposed § 23.145(c). The GAMA notes that this requirement would require a demonstration of an elevated load factor, and suggests that, for reasons of safety, this should be an extrapolation of lower speed data or an analytical finding. The JAA states that the JAA is unclear on the relationship of this proposal to present § 23 335(b)(4)(i) and suggests a paragraph revision that would reference § 23.335(b)(4)(i).

Proposed § 23.145(c) requires a demonstration of 1.5 g pitch maneuver capability up to V_D/M_D (design dive speed/design dive Mach number). The demonstration is necessary and should not be extrapolated from a lower speed test. Calculations may be used to show compliance with § 23.335(b)(4)(i). It is inappropriate to combine the design airspeed with the proposed § 23.145(c) flight demonstration. Also, showing compliance with § 23.335(b)(4)(i) by flight demonstration fails to explore the pitch maneuver capabilities close to V_D/M_D. The FAA adopts § 23.145(c) as proposed.

The JAA questions the need for the c.g. conditions contained in § 23.145, paragraphs (d)(1) and (d)(2). Section 23.21 covers these conditions. The FAA's review shows that the specific reference to the c.g. position is unnecessary, and deletes it. The FAA adopts § 23.145 with the changes discussed above.

Proposal 11

The FAA proposed changing § 23.147 to delete the existing § 23.147(a), to renumber the remaining requirements, and to delete references to center of gravity.

Since the only comment, from the JAA, agrees with the proposed change, the FAA adopts § 23.147, as proposed.

Proposal 12

The FAA proposed to define airworthiness standards for determining the minimum control speed and to reword particular portions of § 23.149 for clarity.

The FAA received comments from the JAA and the GAMA, on § 23.149. Only the JAA addressed the proposed revised definition of V_{MC} in § 23.149(b)(2). The JAA objected to the proposal to change the words "recovering control" to "maintaining control." The FAA intended this proposed revision to eliminate any implication that control is lost when the engine fails. The JAA feels the proposed change is "ill-advised" because the demonstration of V_{MC} results in an airplane handling excursion, in all three axes, followed by a recovery. The JAA identifies the continued use of the word "recovery" in the stall requirements to support this position.

The FAA considered the JAA's comments, and the conference discussion, and concludes that the term "recovering" should not be used. Though excursions may occur in all three axes, those excursions do not mean that complete loss of control of the airplane has occurred. "Maintaining control" includes the action needed to correct these excursions and to continue to fly the airplane with one engine inoperative. It is appropriate for use in this definition. This revision in the V_{MC} definition should not be considered for extension to the stall requirements. Control is lost in a stall; therefore, the term "recovery" is appropriate for the stall requirements.

The JAA also states that the NPRM phrase, "with a yaw of not more than 20 degrees," in the proposed definition of V_{MC} is confusing, since heading excursions are limited to 20 degrees in unchanged § 23.149(d).

The FAA has reviewed this proposed change, along with the text of § 23.149(d), and agrees that the proposed revision does not provide the intended improvements. Accordingly, it is removed in this final rule.

The JAA also comments on proposed § 23.149(b)(5), which would require that in determining minimum control speed the airplane must be in the most critical takeoff configuration. The JAA states that JAR 23.149(b)(5) requires that the propeller controls should remain in the recommended take-off setting throughout.

To clarify this requirement and ensure that the proper propeller control setting will be used, final rule § 23.149(b)(5) includes a statement on the propeller control setting consistent with JAR 23.149(b)(5).

The FAA received comments from the GAMA and the JAA on the proposed change to § 23.149(c) to establish an operational limitation for a minimum speed to intentionally render the critical engine inoperative. This proposal for a safe, intentional, one-engine-inoperative speed, V_{SSE}, includes language that defines a maximum and a minimum value for this speed. The GAMA opposes the maximum and minimum values proposed and believes that these limits are so small that they defeat the purpose. The JAA does not agree with the establishment of V_{SSE} as a limitation.

The FAA has considered these comments and agrees with the expressed position that V_{SSE} should not be established as a limitation. The FAA is aware of the benefits resulting from informing the pilot of the speed that provides an additional safety margin above V_{MC}. This is a especially important in a training environment. Accordingly, § 23.149(c) is revised to require that V_{SSE} must be established and a new § 23.1585(c)(6) requires that this information must be put in the AFM. By establishing this requirement, information recommended by GAMA's Specification No. 1 can be included in the AFM. The FAA adopts § 23.149 with the changes discussed above.

Proposal 13

The FAA proposed changes to the landing control requirements in § 23.153. The FAA received comments from the JAA and the GAMA on this proposal.

The GAMA believes that the FAA may have overlooked the effect that the proposed change would have on airplanes weighing 6,000 pounds or less which are not required to meet § 23.153. For these airplanes the GAMA believes that the speed for control during landing should be set in a different way than using the speed used for the demonstration of landing under § 23.75, minus 5 knots.

The FAA disagrees. The FAA considered all airplane weights in the NPRM. Existing § 23.75 does not differentiate landing speed by weight.

The GAMA states that § 23.153(b) adds the steepest approach gradient for landing control. The GAMA believes that the approach gradient is inappropriate because there is no practical way for a pilot to determine the gradient.

The FAA notes that part 23 already requires a pilot to determine the gradient. Section 23.75(a), as amended by amendment 23–42, requires landing distance to be determined for all airplanes. The section also requires that the distances be based on a descent gradient of 5.2 percent at not less than a 1.3 V_{S1} speed. Additionally, an applicant may show a steeper approach gradient if a means is available to display gradient to the pilot.

The JAA states that the proposed changes to § 23.153 bring the requirement substantially into line with JAR 23.153. JAA also concurs with the inclusion of all airplanes and with the inclusion of proposed paragraphs (b) and (c). The JAA states that it is

"disturbed that the cross-reference to § 23.143(c) could allow the use of a (two-handed) elevator control force as high as 75 pounds in a landing maneuver."

The FAA agrees with the JAA. To clarify the FAA's intent, final rule § 23.153 specifies a one-handed force. The FAA adopts proposed § 23.153, with this change.

Proposal 14

The FAA proposed to change § 23.155 to clarify the conditions used to prove elevator control force.

The JAA submitted the only comment on this proposal, stating its preference for existing § 23.155(b)(2). Also, the JAA states that, if the FAA retains § 23.155(b)(1) as proposed, the words "for level flight" should be changed to "for wings level flight."

The FAA agrees that "for wings level flight" clarifies "level flight condition" and has, therefore, changed the final rule accordingly. In evaluating the suggestion to add the word "wings", the FAA notes that the current § 23.155(b)(2), which this proposal is replacing, uses the words "with wings level." Adding the word "wings" will retain the previously used language. Since the proposals for § 23.155(b)(1) and (b)(2) also contain the words "level flight," the suggested change is also made to these paragraphs. The FAA adopts § 23.155, with the changes discussed above.

Proposal 15

The FAA proposed to add a ten-second limit to the equation in § 23.157(a)(2) and a seven-second limit to the equation in § 23.157(c)(2). These proposed limits would restrict all airplanes above 12,500 pounds to a minimum rate of roll, correcting an inadvertent oversight introduced by adding the commuter category in amendment 23–34.

The JAA stated that the proposed change would align § 23.157 with JAR 23.157. The GAMA believes that proposed § 23.157(b)(4) is not clear and suggested reversing the words "and" and "or."

The FAA agrees that it would not be possible to trim the airplane to the greater of "1.2 V_{S1} and 1.1 V_{MC}." Accordingly, "and" has been changed to "or" in the final rule.

The FAA adopts § 23.157 with the change discussed.

Proposal 16

The FAA proposed to revise the engine power requirements of § 23.175 for the climb conditions.

The comment from the JAA agrees with the proposed change to the required power for reciprocating engines. However, the JAA does not believe that the phrase "or the maximum power or thrust selected by the applicant as an operating limitation for use during cruise * * *" is appropriate. The JAA believes that this limitation can be abused and asks how it should be interpreted in comparison with, for example, maximum continuous power or thrust, if the latter is greater. The JAA notes it is considered unreasonable to "get around" the requirement by declaring a "limitation" while claiming credit for a higher maximum continuous limit under other circumstances. Also, the JAA notes other requirements in part 23 using similar words referring to limits for cruise or climb operations.

The first item addressed by the JAA is that this limitation can be abused; the FAA agrees. This is true of most limitations placed on an airplane. Engine power or thrust limitations are no more likely to be abused than any other limitation. An important aspect of safety in the aviation community is the training of pilots and their understanding that limitations are established to avoid possible unsafe conditions. The FAA does not find the JAA's reasons adequate to change the proposed requirements that would permit the establishment of limitations.

The other JAA position, that limitations are established to allow the holders of a type certificate to "get around" certain other provisions of the requirements, is not valid. There are circumstances, such as where an airframe manufacturer needs to replace the engine on a particular airplane model and the only engine available produces more horsepower than the engine that was originally approved for that airframe. By using the higher powered engine, and establishing limitations, it may be possible to obtain approval without incurring the additional expenses of redesign and testing that would otherwise be needed for using a higher power engine. The regulations permitting the establishment of limitations benefit the public by reducing costs. No known adverse affects on safety have resulted from these provisions.

The JAA also noted that the present § 23.175(d)(3) contains a reference to § 23.161(c)(4), which does not exist. A review of the regulations shows that some publications do reference § 23.161(c)(4) while other publications correctly reference § 23.161(c)(2).

To verify the correct paragraph that should be referenced in § 23.175(d)(3), the FAA reviewed the history of both §§ 23.161 and 23.175. Before the adoption of amendment 23–21 on March 1, 1978, § 23.161 requirements for power approaches were contained in § 23.161(c)(4), and § 23.175(d)(3) correctly referenced in § 23.161(c)(4). When the FAA adopted amendment 23–21, it revised the trim requirements and moved the power approach requirements to § 23.161(c)(2). Amendment 23–21 also revised § 23.175(d)(3) to correctly reference § 23.161(c)(2). This error needs to be corrected in the current publications and, while not included in the NPRM, is included in this final rule.

The FAA adopts § 23.175 with the change discussed above.

Proposal 17

The FAA proposed to revise § 23.177(a) to require that static directional stability and lateral stability be shown under more realistic operating conditions expected in service. Changes proposed to § 23.177(a)(1) revise the approach configuration to be used to evaluate the static directional stability. Instead of the maximum continuous power previously required, the engine power necessary to maintain a three degree angle of descent is now specified. Proposed revisions to § 23.177(a)(2) require static lateral stability in the landing configuration at the engine power necessary to maintain a three degree angle of descent. Presently, 75 percent maximum continuous power is used. In addition, the proposal would have deleted the current rule requiring a bank angle of 10 degrees or more.

The JAA and the GAMA address § 23.177(a)(1). The JAA states, "We do not agree with the proposed relaxations in minimum speed (in configurations other than takeoff) and maximum power in the landing configuration for demonstrating positive directional stability." The JAA believes that directional instability is an undesirable characteristic and should not be permitted within, or outside, the normal flight envelope, and that 1.2 V_{S1} is a reasonable lower speed for all configurations. The JAA also states that power settings above that needed for approach are reasonable in the landing configuration, for example, during the initiation of a go-around. The JAA recommends retaining the existing criteria for airspeed and power. Further, the JAA states that the NPRM explanation that the relaxation in minimum airspeed is taken from Conference Proposal 130 "is not valid for directional stability as the proposed

relaxation was only applicable to lateral stability demonstrations."

The FAA reviewed Conference Proposal 130 and agrees with the JAA that speed range relaxation was not applicable to directional stability. The FAA also agrees that 1.2 V_{S1} is a reasonable lower speed for all configurations and revises § 23.177(a)(1) accordingly. The FAA disagrees with requiring directional stability in the landing configuration at maximum continuous power, since go-around is a transitory condition and the pilot normally changes the airplane configuration promptly. The power required for the three degree angle of descent is retained.

The GAMA states that § 23.177(a)(1) needs to be clarified. The GAMA states that the proposed language calls for a demonstration at 1.2 V_{S1} for the takeoff configuration and at 1.3 V_{S1} for climb, cruise, and approach configurations in the same sentence. The GAMA states that the next sentence addresses the "landing configuration" (normally a power-off case) as having power to maintain a three degree angle of descent (usually the approach case). The GAMA asks whether the word "landing" should be replaced with the word "approach" for the latter demonstration.

The FAA has determined that, contrary to the GAMA assumption, "landing" is the correct word and as the rule states some power is required in the landing configuration to maintain a three-degree angle of descent. This agrees with the configuration and power in proposed § 23.75.

The GAMA notes that the NPRM proposes showing directional stability "at speeds from 1.2 V_{S1} in the takeoff configuration and 1.3 V_{S1} in other configurations * * *." The GAMA states that rudder force reversal (in the same paragraph) is prohibited "from V_{S1}" with no configuration distinction and asks if these are compatible.

The FAA agrees that the rule, as proposed, gave speed ranges that were not compatible. As noted earlier, § 23.177(a) adopts the speed of 1.2 V_{S1} as the lowest for all configurations and this change eliminates the incompatibility. The FAA adopts § 23.177(a)(1) with the changes discussed.

The JAA comment on proposed § 23.177(a)(2), states "we see merit in retaining the existing 10° bank criterion, to define slip angle, provided that a rudder force of 150 lbs. is not exceeded." Section 23.177(a)(2) is adopted as proposed.

However, the JAA also believes that the proposed relaxation in power for the landing configuration demonstration is ill-advised and that the airplane could be laterally unstable in a go-around.

The FAA agrees that relaxation of the engine power requirements could result in lateral instability in a go-around. However, since go-around is a transitory condition where the pilot normally makes prompt changes to the airplane configuration, there is no need for the regulations to address higher engine power in the landing configuration.

Concerning the proposed § 23.177(a)(3), the JAA questions two points. First, in the sentence, "At larger slip angles up to the angle at which full rudder and aileron control is used * * *," the JAA believes that the wording should read "full rudder or aileron." The JAA also believes it is unlikely that rudder and aileron limits would be reached together in a steady sideslip maneuver. Second, the JAA questions the meaning of the sentence, "Enough bank must accompany the sideslip to hold a constant heading." The JAA believes clarification is necessary.

The FAA agrees that the word "or" between the words "rudder" and "aileron" clarifies § 23.177(a)(3). Concerning the second point, the FAA has applied this rule for several years without any questions about its intent or manner of performing the maneuver. The FAA adopts § 23.177(a), with the changes discussed above.

Proposal 18

The FAA proposed to remove § 23.179, Instrumented stick force measurements. Since the FAA received only one comment from JAA, which agrees with the proposed change, the FAA is deleting § 23.179, as proposed.

Proposal 19

The FAA proposed to revise § 23.181 to account for installed stability augmentation systems, and to require an evaluation of the airplane for phugoid-type oscillations. The FAA received comments on this proposal from the JAA and the GAMA.

The JAA notes that part 25 requires stability and augmentation systems and § 25.181 "does not include the relaxation in stick fixed dynamic stability demonstrations offered by the proposed change to FAR 23.181". JAA apparently bases this conclusion on the phrase "except when compliance with § 23.672 is shown."

The FAA did not intend for this phrase (proposed for § 23.181(a)(2) and (b)(2)) to relax the dynamic stability requirements. If a stability and augmentation system is installed, that system will move the primary controls. Since the JAA comment shows that the proposed wording could be misunderstood, the FAA has removed this wording from the final rule and has added a new § 23.1891(c) to replace it. Proposed paragraph (c) of § 23.181 is paragraph (d) in the final rule.

The JAA and the GAMA each comment on proposed § 23.181(c). The JAA states that it will propose the same requirement for JAR 23. The GAMA notes the phugoid oscillation requirement of proposed § 23.181(c) requires the development of guidance material (phugoid is an oscillation in pitch). The FAA recognizes the need for guidance and is revising Advisory Circular 23–8A, Flight Test Guide for the Certification for part 23 Airplanes. The FAA adopts § 23.181 with the changes discussed above.

Proposal 20

The FAA proposed to clarify the requirements of § 23.201(c) by stating the time that the elevator control must be held against the stop to consider the airplane in a stall condition. The FAA recognizes the use of artificial stall barrier systems, such as a stick pusher, as an acceptable means of defining stall. When the system activates, the airplane is in a stall condition. The FAA received comments on this proposal from the GAMA and the JAA.

The GAMA questions the FAA's justification for the proposed requirement for a two-second delay after the control reaches the aft stop during stall determination.

The wording proposed by the FAA would replace the current definition, which reads, "or until the control reaches the stop." Several airplanes have been tested where the elevator has been pulled back to achieve the required speed reduction, but a nose pitch down motion and stall did not occur. Instead, the speed reduction continued until the elevator control reached the mechanical stop and the speed reduction simply stopped. In each of these tests, lengthy discussions between the FAA and the manufacturer have occurred on how long the elevator control needs to be held against the stop before this flight condition can be called a stall. This proposed change defines the stall condition. The FAA chose the two-second interval based on conference discussions and testing experience. The FAA adopts this proposal as presented

The GAMA also suggests that the last line of § 23.201(c) more appropriately belongs in § 23.201(d)(2).

Section 23.201(d)(2) addresses the power application procedure to be used, if required during stall recovery, and is similar to § 23.201(c). The requirements of § 23.201(c) define when the stall

evaluation is completed and assure that engine power is not applied too quickly. To clarify the two different statements on the application for power at the completion of the stall, the requirements of § 23.201(c) are adopted as proposed, and § 23.201(d)(2) is revised to use similar wording.

The JAA notes on § 23.201(f) that it is the power loading and not the weight of the airplane that produces the extremely high nose-up attitudes at 75 percent maximum continuous power; therefore, the proposed relaxation for airplanes of over 6,000 pounds should be extended to all weights of airplanes. The JAA believes that the power-on stall problem should be addressed more directly by placing an upper limit of 30 degrees on the pitch attitude.

The FAA does not agree with the recommendation to place an upper limit of 30 degrees on the pitch attitude. An attitude limit would require extensive and costly flight tests to evaluate various airplane configurations and flight attitudes without a corresponding increase in safety.

The FAA agrees with the JAA's position that the relief proposed for airplanes of more than 6,000 pounds should be extended to airplanes of all weights. When these proposals were developed, the FAA was unaware of any airplanes of 6,000 pounds or less that would have engine power-to-weight ratios capable of producing the extremely nose-high stall characteristics experienced in heavier airplanes. Following the development of these proposals, several airplanes of 6,000 pounds or less maximum weight have been developed with similar power-to-weight ratios. There is a need to allow those airplanes to use the same test procedures proposed for airplanes of more than 6,000 pounds. The FAA has re-examined the stall test procedures and notes that airplanes of all weights have been successfully tested at the current 75 percent maximum continuous power requirement. Therefore, there is a need to consider various power-to-weight ratios likely to occur for airplanes of any weight. Accordingly, the final rule language is revised to allow manufacturers to continue testing at 75 percent maximum continuous power for airplanes at any weight. If this test shows undesirable stall characteristics at extremely nose-high attitudes, the testing may be done in accordance with the power and configuration proposed in the notice for airplanes of more than 6,000 pounds. The final rule provides relief for airplanes that encounter extremely nose-high attitudes and undesirable stall characteristics. The FAA revises proposed § 23.201(f)(4) to allow testing airplanes of any weight for the power requirements discussed. The FAA adopts § 23.201 with the changes discussed above.

Proposal 21

The FAA proposed to change the § 23.203 roll excursion requirements to clarify the permissible limits for both turning stalls and accelerated stalls. The FAA received two comments on this proposal.

The GAMA asks FAA "to clarify how one can 'regain level flight * * * without increasing power' (§ 23.203(b)) with the power off at the maneuver entry requirement of § 23.203(c)(4)(i)."

The FAA has clarified the requirement by revising § 23.203(b) to read "wings level flight" rather than "level flight."

The GAMA also states that the "FAA has not provided sufficient data to justify the reduction in allowable roll excursion requirements for turning flight stalls" and requests more justification.

As stated in the NPRM, 60 degrees of roll in turning flight stalls would permit a roll to go to 90 degrees, which the FAA considers to be hazardous. The FAA adopts the proposal for § 23.203(b)(4) as proposed.

The JAA concurs with the proposed changes to § 23.203 but notes that the two comments offered on § 23.201(f) relating to power apply equally here.

As discussed in the response to comment on § 23.201(f)(4), the FAA disagrees with the recommendation to place an upper limit of 30 degrees on pitch attitude. An attitude limit would require many tests to evaluate various airplane configurations and flight attitudes without a corresponding increase in safety. Since the NPRM did not address a specific pitch limit, the suggested limit is beyond the scope of the notice and would require additional rulemaking. Also, as previously indicated, the FAA agrees with the JAA recommendation that the relief proposed for airplane weights greater than 6,000 pounds should be applied to all airplane weights. The FAA revises § 23.203(c)(4) to read like § 23.201(f)(4).

The JAA also states that to advocate "normal use of flight controls" in the special circumstances of stall recovery is potentially misleading.

The FAA does not agree. The phrase "normal use of flight controls" has been successfully applied in § 23.202(e) for many years without problems. For example, if ailerons remain effective during the stall, then regaining level flight by using them is appropriate. The FAA adopts § 23.203 with the change discussed above.

Proposal 22

The FAA proposed to revise the critical-engine-inoperative stall requirements of § 23.205 to require that critical-engine-inoperative stalls be evaluated with the wing flaps in the climb position.

The comment received, from the JAA, expresses serious reservations about keeping the critical-engine-inoperative stall requirement. The JAA asserts that the real life one-engine-inoperative stall is not represented by limiting power to 75 percent, by maintaining wings level at the stall, and by utilizing a reduced throttle recovery. Conversely, the JAA states that requiring high asymmetric power to be held down to the stall and throughout the recovery would create an unreasonable risk of spinning. The JAA questions whether this requirement can be of significance in ensuring adequate one-engine-inoperative low speed characteristics in service. The JAA observed that the Transport Category Directorate deleted the equivalent part 25 requirement through amendment 25–72.

Since this issue was not addressed in the NPRM, the FAA is not taking any action at this time. The FAA adopts proposed § 23.205 as proposed.

Proposal 23

The FAA proposed to change § 23.207 to require the current stall warning margins to be applicable to straight stalls, as set forth in § 23.201(c). It also proposed requirements for turning flight and accelerated stalls in a new § 23.207(d). The intent is to ensure that an adequate margin above the stalling speed exists in these two stall conditions.

The FAA received comments from the JAA and the GAMA on this proposal. The GAMA states that the upper stall warning margin should apply to power-off stalls only. The GAMA believes the lead-in of proposed § 23.207(c) should be rewritten to read, "For the power-off stall tests required by § 23.201(c) * * *." According to the GAMA, applying § 23.207(c) to the power-on stall conditions of § 23.201(c) would result in very high deck angles for airplanes with high thrust-to-weight ratios. With a stall warning greater than the 10 knot limit, or 15 percent of the stalling speed limit, the commenter feels that the pilot will be alerted sooner and, thus, avoid excessively high deck angles. The GAMA notes that multiengine airplanes at maximum weight, aft c.g., and high power can fly at airspeeds below V_{MC}. If the difference

between V_{MC} and the stall speed is greater than 10 knots, or 15 percent of the stall speed, the GAMA believes the airplane could be difficult to recover if the critical engine fails. According to the GAMA, a stall warning greater than 10 knots, or 15 percent of the stall speed, reduces the time the airplane will be below V_{MC} without a stall warning. The GAMA states that an equivalent level of safety can be established for a stall warning in excess of 10 knots, or 15 percent of the stall speed, if there are no nuisance warnings during normal takeoff, climb, approach to landing flare, go-around, or during the emergency procedures of single-engine takeoff and climb, approach, and landing.

The GAMA's suggested changes are beyond the scope of this notice. The proposed revision of § 23.201 would preclude very high deck angle stalls in the power-on condition. Further, the stalls required by § 23.201(c) are one knot/second decelerations and the 10 knot, or 15 percent of the stalling speed, warning is appropriate for this flight condition. New § 23.207(d) addresses higher decelerations; therefore, § 23.207(d) is adopted as proposed.

The JAA concurs with the proposed amendments. However, the JAA is concerned with the FAA's explanation for rejecting conference proposal 160 concerning the audibility of a stall warning when wearing headsets. The JAA believes that regulating the use of headsets, regarded as personal instead of airplane equipment, would be difficult. The JAA states that it would be unusual to see an AFM prohibition on the use of certain types of headsets and questions whether such a limitation would be observed. The JAA states it is therefore essential to ensure that all audio warnings remain adequately audible with any standard of headset that is likely to be used in service. The JAA states that the following words are being considered for JAR 23.1431(d): "If provision is made for the use of headsets, it must be demonstrated that all aural warnings are effective, with all permitted types of such equipment in use under the most adverse conditions." The JAA concludes that the FAA apparently does not intend to regulate this subject.

The FAA discussed this issue in the NPRM but did not make a specific proposal. This issue is under consideration for a future rulemaking.

After publishing the NPRM, the FAA recognized that the second sentence of the proposed § 23.207(d) prohibits a stall warning occurrence when a stall is imminent. The intent of the proposal was to preclude nuisance stall warnings. Revised § 23.207(d) clarifies that stall warnings should not occur when utilizing AFM procedures. The FAA adopts § 23.207 with the change discussed above.

Proposal 24

First, the FAA proposed to clarify § 23.233(a) by specifying that the crosswind requirements must be demonstrated. Second, it proposed to revise § 23.233(b) to make the rudder effective at half the touchdown speed. Third, it proposed seaplane directional stability and control requirements to ensure better handling during water operations up to the maximum crosswind velocity of 0.2 V_{SO}.

The FAA received comments on this proposal from the JAA and from a private individual. The JAA believes that it is necessary to establish the maximum crosswind conditions under which safe operation has been demonstrated and to publish this information in the AFM. The JAA suggests that, with the addition of the word "taxiing," the words currently proposed for JAR 23.233(a) are preferable. They are: "(a) A 90° cross-component of wind velocity, demonstrated to be safe for taxying, take-off and landing, must be established and must not be less than 0.2 V_{SO}." The FAA concurs with this suggestion and revises § 23.233(a) to agree with the JAR wording.

The other commenter states: "Paragraph 23.233 as proposed is unclear and grossly unrealistic. It is not clear that 23.233(a) applies during landing or takeoff as well as taxiing. Moreover, 0.2 V_{SO} is inadequate for normal operation of small airplanes. That velocity is less than seven knots for airplanes offered currently. Small airplanes are routinely operated in crosswinds several times as great." The commenter believes that § 23.233(a) should be revised to read: "(a) It must be demonstrated that there is no uncontrollable ground or water looping tendency in 90° crosswinds, up to a wind velocity of 0.5 V_{SO}, but not less than 15 knots, at any speed at which the airplane may be expected to be operated on the ground or water during landing or takeoff." The commenter also notes that many small airports have single runways that are subject to crosswinds substantially exceeding the demonstrated crosswind components of existing airplanes but that operations proceed regularly in these conditions. The commenter concludes, "The regulations should agree with the clear public need."

In response to this commenter, the FAA notes that the change to § 23.233, made in response to the JAA comments, clarifies that § 23.233(a) includes landing, takeoff, and taxiing. Since the FAA did not propose crosswinds above 0.2 V_{SO} in the NPRM, it is inappropriate to apply a more stringent crosswind criterion in the final rule.

The JAA also states that there is no need to address seaplanes separately in a proposed new § 23.233(d), which refers to § 23.233(a). The FAA disagrees. Seaplanes need to be addressed separately. As stated in the NPRM, seaplane step taxi and step turns are conditions that need separate investigation; therefore, § 23.233(d) is adopted as proposed. The FAA adopts § 23.233 with the change discussed above.

Proposal 25

The FAA proposed changing the requirements of § 23.235 to require an airplane evaluation during taxi, takeoff, and landing on the roughest surface expected in service. Also, the FAA proposed to require water handling information and information on allowable sea conditions for small airplanes that may be operated from water.

The FAA received comments from the GAMA and the JAA on this proposal. The JAA believes that § 23.235(a) should address the characteristics of the whole airplane, not just the shock-absorbers. The commenter recommends the wording of proposed JAR 23.235: "The airplane shall be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the aeroplane, when the aeroplane is taxied on the roughest ground that may reasonably be expected in normal operation and when takoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation."

The FAA concurs and changes § 23.235(a) for clarification. The GAMA mentions that § 23.235(a) proposes to cover rough field takeoffs and landings, but the title of the existing rule limits its content to taxi operations. The FAA agrees and has revised the section title.

The GAMA states that the means of compliance is unclear and asks whether takeoffs and landings on rough ground must be demonstrated. The clarification of § 23.235(a) discussed above resolves this issue.

The GAMA also notes that § 23.235(b) proposes inclusion of "allowable" sea conditions for floatplanes in the AFM. The GAMA believes that this establishes an inappropriate limitation of little use to a pilot contemplating a landing. At most, the GAMA states, a statement of

demonstrated wave height for operations should be included in the AFM. The FAA concurs with the GAMA's view and § 23.235(b) is revised as suggested.

The JAA wants AFM information to appear in subject G, not subpart B, and suggests transferring the intent of proposed § 23.235(b) to §§ 23.1583 and 23.1585. The FAA concurs and moves the AFM portion of § 23.235(b) to § 23.1585. Sea conditions are not an intended limitation so it is inappropriate to move the AFM portion to § 23.1583. The FAA adopts § 23.235 with the changes discussed above.

Proposal 26

The FAA proposed clarifying in § 23.251 that buffeting must not cause structural damage anywhere in the flight envelope and specifying a single value of design dive/mach speed, V_D/M_D, rather than the minimum value of design dive speed, V_D, permitted in the structural requirements. Since the only comment from the JAA agrees with the proposed change, the FAA adopts § 23.251 as proposed.

Proposal 27

The FAA proposed to change § 23.253 to expand the trim condition in § 23.253(a) from "any likely cruise speed" to "any likely speed," which encompasses the descent trim condition. Since the only comment from the JAA agrees with the proposed change, the FAA adopts § 23.253 as proposed.

Proposal 28

The FAA proposed to revise § 23.305 to clarify the meaning of failure during static ultimate load test.

The one commenter, the JAA, questions why the "liberal interpretation" mentioned in the NPRM occurs in applications of part 23 regulations and not in part 25. The FAA addressed this issue in the FAR part 23 Airframe Airworthiness Review, which identified inconsistent definitions of failure during ultimate load testing. Advisory Circular 23–6, which resulted from that meeting, addresses this commenter's concerns. The Transport Airplane Directorate, which is responsible for part 25, is aware of the part 23 regulatory action.

The FAA adopts § 23.305 as proposed.

Proposal 29

The FAA proposed a new requirement to correct structural test results for material correction factors in § 23.307. The FAA received comments on this proposal from the GAMA, the JAA, and from Transport Canada.

The GAMA states that the proposed amendment is impractical and, perhaps, impossible to meet. The GAMA notes that under current regulations a factor of safety of 1.5 times limit load covers variations in material mechanical properties, construction dimensions, and load predictions. Also, the GAMA notes that the 1.5 factor has proven satisfactory for ultimate strength for more than 60 years. The GAMA recommends withdrawing the proposal.

Transport Canada notes difficulties when accounting for material and dimensional variations of the many subcomponents, determining their effect on the strength tests, and justifying a material correction factor of a singular value. Transport Canada proposes a "practical alternative" for low budget manufacturers of requiring the test specimen to be of lower strength than production articles.

The JAA suggests that this topic should more properly be addressed in FAR part 21 since the topic applies to all products.

No comments addressed composite materials which is a specific issue of this proposal.

Considering the validity of the comments, the complexities of the "practical alternative," and the lack of attention to the composite material issue, the FAA has decided to withdraw the proposed change to § 23.307.

Proposal 30

The FAA proposed to amend § 23.321 so the effects of compressibility on flight loads will be considered at each speed within the flight envelope.

The GAMA recommends that § 23.321(b) be rewritten to require consideration of compressibility effects above Mach 0.6. The GAMA argues that the effects of compressibility below Mach 0.6 are insignificant on flight loads. The JAA argues that compressibility needs to be taken into account only if significant and that compressibility is unlikely to be significant if the airplane Mach number is less than 0.5.

The FAA has reviewed the NPRM proposal and the comments received. To simplify certification procedures of lower performance airplanes, small compressibility effects may be neglected below a design dive speed of Mach (M_D) 0.40. At Mach numbers above zero, theoretical compressibility effects cause an increase in an airfoil lift curve slope. This increase is proportional to the Prandtl-Glauert factor, $1/\sqrt{(1-M^2)}$, where M is the free stream Mach number. This theory correlates very well with wind tunnel tests of airfoils and wings.

Wind tunnel tests provide low speed airfoil data between Mach 0.2 and 0.4 The experimental data contains the theoretical effects of speed between zero and the test Mach number Taking 0.30 as an average test Mach number, then, according to theory, the lift curve slope will increase by 4 and 10 percent, respectively, at 0.40 and 0.50 Mach numbers. The FAA considers the latter figure to be a significant increase.

Considering this problem, the FAA reviewed the design dive speeds for some light airplanes certificated under Civil Air Regulation (CAR), part 3. It calculated an M_D somewhat less than 0.4 at 15,000 feet in the standard atmosphere. One of the airplanes examined, a turbocharged version, had a maximum operating altitude of 24,000 feet and an M_D somewhat greater than 0.5.

The FAA has decided that the effects of compressibility must be considered by the applicant. Compressibility threshold significance varies due to wind tunnel data and testing methods, altitudes, and airplane design. For these reasons, the FAA establishes no design dive speed Mach number compliance threshold. The original proposal would have revised paragraph (b) of § 23.321 to provide for the effects of compressibility. Upon reevaluation, the FAA has concluded that it would be clearer to add this requirement in a new paragraph (c). The FAA adopts § 23.321 with the changes discussed above.

Proposal 31

The FAA proposed to correct an error in § 23.361 introduced by amendment 23–26. The error significantly reduced the structural design torque levels required for flight conditions at takeoff power. The intent is that the torque factors of § 23.361(c) apply to all § 23.361(a) conditions.

Since the only comment received, from the JAA, agrees with the proposed change, the FAA adopts § 23.361 as proposed.

Proposal 32

The FAA proposed to change the heading of § 23.369 by eliminating the phrase "Special conditions for" at the beginning of the heading. The content of § 23.369 remains unchanged.

The one commenter, the JAA, agrees with the editorial change and asks whether this is the only part of the structure needing special consideration in reversed airflow conditions. The FAA is not aware of any additional need for special consideration based on 30 years of service history. The FAA adopts § 23.369 as proposed.

Proposal 33

The FAA proposed to include aerodynamic loads in the design of the engine mount with the gyroscopic loads required by § 23.371. The one commenter, the JAA, suggests adding the word "combined" so the introductory statement reads "designed for the combined gyroscopic and aerodynamic loads * * *." The FAA agrees and revises the introductory statement. The proposed § 23.371 is adopted with the change discussed above.

Proposal 34

The FAA proposed to increase the minimum rudder force, from 130 pounds to 150 pounds, in the last line of the table of § 23.397(b) to make it compatible with the "strength of pilots" limits shown in § 23.143. Since the only comment received, for the JAA, agrees with the proposed change, § 23.397(b) is adopted as proposed.

Proposal 35

The FAA proposed to revise § 23.415 to add requirements defining airplane tie-down loads and to include design criteria for attachment fittings and surrounding structure.

The one commenter, the JAA, submits a recommended "more comprehensive" regulatory paragraph for consideration, and interpretative material based on JAR 23.415(c). The JAA proposes considering all weights between the empty weight and the maximum weight declared for tie-down limit load conditions. The JAA believes the following areas should be included in the consideration: tie-down points stated in the appropriate manual, surrounding structure, control system surfaces, and associated gust locks.

The FAA agrees that all weights should be considered for tie-down points and that structure surrounding the tie-down points should be substantiated for adequate strength. The recommentation to consider these weights is beyond the scope of the notice. The recommendation is retained for a future rulemaking notice. The FAA adopts § 23.415 as proposed.

Proposal 36

The FAA proposed to clarify when § 23.473(f) requires a ground load energy absorption test. The FAA received one comment on this proposal. The commenter proposed a wording change that would revise § 23.473(f) and would change the meaning of this requirement. Since the FAA considers the commenter's proposed change beyond the scope of the notice, the FAA adopts § 23.473(f) as proposed.

Proposal 37

The FAA proposed to revised § 23.479(c) to add a new requirement for landing gear spring-back loads. Additionally, this proposal allows for loads development based on testing or rational analyses other than that referenced in appendix D. This proposal also restricts the minimum values of the drag component when using the method referenced in appendix D. Since the only comment received, from the JAA, agrees with the proposed change, § 23.479(c) is adopted as proposed.

Proposal 38

The FAA proposed to clarify the location and combination of loads in § 23.485. Since the only comment received, from the JAA, agrees with the proposed change, the FAA is amending § 23.485, as proposed.

Proposals 39–47

The FAA proposed to amend § 23.521 and to add new §§ 23.523, 23.525, 23.527, 23.529, 23.531, 23.533, 23.535, 23.537, and a new appendix H, to provide a complete new set of water load requirements. Present part 23 refers to Air Force-Navy-Civil (ANC–3) and incorporates by reference the water loads sections of part 25. Since the one comment received, from the JAA, agrees with the proposal, the proposed amendment, new sections and appendix H are adopted as proposed.

Proposal 48

The FAA proposed to add a new § 23.573, applicable to composite structure, which would require the applicant to apply a damage tolerance evaluation. It also proposed optional damage tolerance requirements for metallic structures.

The proposed optional damage tolerance requirements caused confusion, so in this final rule the FAA has referenced this optional provision in new §§ 23.571(c) and 23.572(a)(3). Further, in § 23.573, the FAA added a lead sentence informing the applicant that composite structure must be evaluated using § 23.573. Now, when the applicant reads these three sections, it should be clearer that damage tolerance is mandatory for composite structures and optional for metallic structures.

The FAA received substantive comments on this proposal from the GAMA, the JAA, the CAA-Australia, and Transport Canada. The CAA-Australia's views on fiber reinforced plastics (FRP) are:

1. They exhibit very complex failure mechanisms.

2. Fatigue failures usually show multiple defects throughout the specimen; for metallic structures, a single crack is frequently observed

3. Four basic damage modes occur. These are matrix cracking, delamination, fiber fracture, and interfacial debonding. These damage modes may occur singly, or in combination, and interact with each other.

Based on these views, the CAA-Australia believes that: (1) Primary structure that has undetectable damage must carry design ultimate load; (2) that this structure must also carry design limit loads if the damage is detectable; and (3) when detectable damage occurs, the airplane must be removed from service unless it can be shown that the structure will always carry ultimate load with that damage.

The CAA-Australia believes that FRP structures should be designed to carry the ultimate load when manufacturing or service damage exists that is not immediately obvious. This position is based on the lack of knowledge about actual damage initiation, propagation rates, inspection difficulties, and material that is vulnerable to invisible accidental damage. The CAA-Australia offers the following additional comments on proposed § 23.573:

1. We are concerned that the damage tolerance approach will be used even where it is not practicable simply to circumvent the consequences of large scatter factors needed in the safe life approach. We believe that with appropriate scatter factors the safe life approach remains acceptable, and perhaps desirable, for FRP in these classes of airplanes.

2. Proposed paragraphs (b) and (k) should not be limited to impact damage because other sources of damage exist.

3. Damaged structure ultimate load capability should also apply to metallic structure despite whether it is damage tolerant. Damaged structure should be removed from service if its strength falls below ultimate load capacity.

4. The proposal is interpreted to require analyses, or proof testing, of production bonded joints in metallic structures, regardless of whether they have been evaluated as safe life or damage tolerant.

5. The words "and/or" in the introductory text of the proposal should be revised to read "and" to clarify that both the wing and pressurized cabin must be evaluated.

6. The primary structure should be inspected even when a "no growth (zero growth)" crack exists. Also, visual inspections may be misleading. The intent of part 25, and the proposal for

part 23, is to maintain safety by inspection given uncertainties in the design process, and errors in manufacturing, maintenance, and operation.

7. The term "barely visible damage" should be avoided. Certain non-destructive inspection (NDI) techniques are believed to "find" defects, to "see" defects. Considering NDI, "visible" is no longer a word associated only with human vision. Also, the commenter notes that, if the unaided eye visual inspection is accepted as a threshold for detecting damage, explicit inspection procedures should be provided. It is not acceptable to use maintenance procedures or the pilot's preflight inspection as the means of accomplishing visual inspection.

The GAMA comments on this proposal:

1. The NPRM heading "Water Loads" for § 23.573 is a typographical error.

2. The proposal would add a requirement that makes the damage tolerance evaluation a requirement for composite structure and an option for metallic structure.

3. Many requirements for composite structure are not appropriate for metallic structure.

4. The proposal contains detailed acceptable means of compliance that should be removed and placed in an Advisory Circular.

Based on the above stated positions, the GAMA submitted a proposed complete revision of § 23.573 that would more clearly present the criteria for composite and metallic structure.

The JAA comment states that the proposed provisions of JAR 23 relating to composites are also based on recently issued FAA special conditions and is therefore largely technically harmonized with the proposed new § 23.573. However, the JAA notes several concerns:

1. Unlike previously issued special conditions, the proposal only addressed pressurized cabin structure and omitted critical fuselage structure.

2. The proposal for § 23.573(k) for structures, where damage tolerance methods are shown to be impractical fails to require previously issued special conditions. These special conditions required a residual strength test to ultimate load after completion of the fatigue test. The JAA recommends inserting this provision because the operator would be unaware of any reduction in strength capability.

3. The editorial layout of proposed § 23.573 is potentially misleading as to its applicability to metallic and composite structures.

The FAA reviewed the above comments and, in general, concurs. Special conditions issued earlier for composite airplanes were used as the basis for this proposed new section. Many of these special conditions were prepared and issued before AC 20–107 was issued. Therefore, there was no guidance available for composite structures and it was appropriate for those special conditions to include acceptable means of compliance. The regulations should be limited to minimum airworthiness standards to be met by an applicant for a type certificate and the acceptable means of compliance should be included in advisory circulars. The FAA finds that AC 20–107 contains much of the guidance needed for compliance with the requirement in proposed § 23.573. If there is a need, the FAA will develop and issue additional guidance. Based on the comments, the FAA has carefully reviewed the proposal and has deleted the redundant material and the guidance material from the final rule.

The FAA agrees with and generally accepts the complete rewrite of proposed § 23.573 submitted by the GAMA. The GAMA rewrite clearly presents mandatory requirements for composite materials, § 23.573(a); optional damage tolerance design standards for metallic structures, § 23.573(b); and inspection provisions, § 23.573(c).

The following paragraphs should assist the reader's understanding of the transition from NPRM to this final rule:

1. Section 23.573(a) of the final rule contains the provisions included in the introductory text in the NPRM. The last sentence of this paragraph comes from proposed § 23.573(j) in the notice. Proposed § 23.573(j) contained general requirements applicable to all composite structures. It also should have been included in the general requirements of the introductory text in the notice. The words "material variability and environmental conditions" in § 23.573(j) cover the list of conditions, such as temperature and humidity, that were spelled out in the proposal and that are removed from the final rule. AC 20–107 contains information about this topic.

2. Section 23.573(a)(1) of the final rule contains the text of the first sentence of proposed § 23.573(b). The FAA guidance material in the second sentence of proposed § 23.573(b) is included in AC 20–107.

3. Section 23.573(a)(2) comes from proposed § 23.573(c). Certain explanatory words were removed from this paragraph. Section 23.573(a)(3) is a combination of § 23.573(g) and (h), in the proposal. Section 23.573(g), for pressurized cabins, and § 23.573(h), for other parts of the airplane, contained common testing requirements that have been combined. The structural items, such as the wing, identified in proposed § 23.573(h) appear in final rule § 23.573(a) and are not repeated in § 23.573(a)(3). The special consideration for pressurized cabin structure in proposed § 23.573(g)(1) and (g)(2), is now included in final rule § 23.573(a)(3)(i) and (a)(3)(ii).

4. Section 23.573(a)(4) is the same as § 23.573(d) in the NPRM. Section 23.573(a)(5) is the same as § 23.573(i) in the NPRM. Verifying the strength of bonded joints by non-destructive testing is added to this paragraph to provide a third acceptable means of approval.

5. Section 23.573(a)(6) comes from § 23.573(k) in the NPRM. This paragraph is rewritten for consistency with the other paragraphs in this section.

6. Instead of the composite damage tolerance requirements proposed for metallic structures by § 23.573(a) in the NPRM, the final rule provides these requirements in § 23.573(b).

7. Section 23.573(c) combines the proposed requirements of § 23.573, paragraphs (e) and (1), from the NPRM and makes this a requirement applicable to composite structures. Those inspection requirements also apply to metallic structures subject to the optional damage tolerance provisions of final rule § 23.573(b).

8. Proposed § 23.573(f) is deleted in the final rule. This paragraph described load spectra, load truncation, and types of damage that must be considered in the damage tolerance evaluation. It contained advisory material on testing methods and did not contain any testing requirements. Though this paragraph is removed, the topics identified must be considered and documented in any damage tolerance evaluation.

The FAA adopts § 23.573, with the changes discussed above and includes revisions to §§ 23.571 and 23.572.

Proposal 49

The FAA proposed to revise § 23.613 to place into part 23 the probability basis used for establishing material allowables. The probability basis appears in MIL–HDBK–5 and is duplicated in §§ 23.613 and 23.615.

The FAA received comments on this proposal from the GAMA, the JAA, and Transport Canada. The JAA agrees with the proposals because they significantly harmonize with JAR 23.

The GAMA believes that § 23.613(c) should continue to list the various strength authority documents (MIL–

HDBK–5 and others) to make it clear that these references continue to be acceptable. The FAA agrees that these references are still acceptable and concludes that since this material is advisory, it is more appropriate that it be included in an advisory circular.

Transport Canada suggests substitution of the word "design" for the word "strength" in proposed § 23.613(d) on the ground that a "design detail may have high static strength but still be a poor design from the point of view of fatigue." The FAA agrees and has amended the paragraph accordingly. The proposed § 23.613 is adopted with the changes discussed above.

Proposal 50

The FAA proposed to remove § 23.615 since it is no longer needed in view of the changes to § 23.613. The two commenters, the GAMA and the JAA, agree with the proposal. Section 23.613 is removed as proposed.

Proposal 51

The FAA proposed to provide relief from non-destructive testing requirements for critical castings and to define non-structural casting requirements in § 23.621.

One commenter, the JAA, believes the intent of proposed § 23.621(c)(1)(i) is: "* * * 100 percent inspection by visual, radiographic and either magnetic particle, penetrant or other approved equivalent non-destructive inspection method." The FAA agrees and revises § 23.621(c)(1)(i) accordingly.

The JAA states that it is sympathetic to the FAA's proposed revision to § 23.621(c)(1)(ii) but requests the sharing of FAA's experience concerning the adequacy of a factor of 2.0. All available experience was shared in discussions at the Airworthiness Review Conference; in conference proposals 240, 241, and 242; and in the explanation information contained in the NPRM. The FAA adopts proposed § 23.621(c)(1)(ii) as proposed.

The JAA also states that § 23.621(e), regarding non-structural castings, is redundant since present § 23.621(a) already excludes non-structural castings.

After further review, the FAA has concluded that § 23.621(a) refers to "non-structural" fluid systems castings only. Section 23.621(e) includes those fluid systems castings addressed by § 23.621(a), but it is not limited to them. Section 23.621(e) is adopted as proposed and any redundancy between § 23.621, paragraphs (a) and (e), will be addressed by future rulemaking. The FAA adopts § 23.621 with the changes discussed above.

Proposal 52

The FAA proposed to define the dive speed, V_D, to reduce the Mach number from 0.6 to 0.5, and to introduce flutter criteria for damaged structure in § 23.629. The FAA received comments on this proposal from the GAMA and from the JAA.

The GAMA recommends that the proposed changes to § 23.629(d)(1) not be made. This commenter recommends that the Mach cut-off references remain at 0.6 and 260 knots (EAS) and that the reference to altitude be eliminated. The JAA states that since "260 kt EAS at 14,000 feet is M=0.5, this has been proposed for JAR 23."

The FAA has determined that the Mach number 0.5 is technically more appropriate (and the JAA agrees) to the 260 knot (EAS) requirement and causes no significant flutter certification problem. After further review, the FAA has decided that the reference to altitude, although technically correct, is irrelevant; therefore, it is removed.

The GAMA proposes that V_D/M_D would be more appropriate than V_D alone. The FAA agrees and changes the proposal accordingly.

The GAMA also asks the FAA to revise § 23.629(g) and (h) to clarify that the phrase "analysis only" is the regulatory requirement.

The FAA disagrees. As proposed, § 23.629(g) and (h) require an analysis and permit certification by testing. An "analysis only" requirement would effectively discourage and prohibit other certification substantiation. The words "by analysis or test" replace the words "by analysis" in paragraphs (g) and (h). By this change, the applicant is required to show that the airplane is free from flutter up to V_D/M_D, but is permitted to use analysis or other means that are appropriate for the design.

Finally, the GAMA proposes that the analytical flutter clearance factor of 1.2 V_D in § 23.629(b) be changed to 1.15 V_D. Changes to § 23.629(b) are outside the scope of this NPRM. The FAA will consider this in future rulemaking projects.

The JAA observes that V_D is not explicitly stated in proposed § 23.629(h) although it is in proposed § 23.629(g). The FAA agrees that both paragraphs should address V_D, and final rule § 23.629(h) is revised accordingly. The FAA adopts § 23.629 with the changes discussed above.

Proposal 53

The FAA proposed to extend the installation requirements in § 23.655, currently applicable only to the tail surfaces, to include all control surfaces.

Since the only comment, received from the JAA, agrees with the proposed change, the FAA adopts § 23.655 as proposed.

Proposal 54

The FAA proposed to add a new § 23.672 that provides criteria for approval of certain stability augmentation devices, and automatic and power-operated systems.

The FAA received comments on this proposal from the GAMA, the JAA, and the ALPA. The ALPA strongly supports the proposed change. The JAA states that the adoption of proposed FAR 23.672 for JAR 23 is under discussion.

The GAMA recommends that the FAA make it clear that this requirement would not apply to a simple downspring or a bobweight stability device. The FAA agrees with the GAMA that new § 23.672 would not apply to devices such as downsprings and bobweights since they are not "systems" as addressed in this requirement. Since § 23.672 is virtually identical to § 25.672, and since there have been no problems interpreting that section consistent with this position, the FAA concludes that no changes are needed. The FAA adopts § 23.672 as proposed.

Proposal 55

The FAA proposed to revise § 23.679 by adding provisions for an automatic-disengage control lock system. The proposal would also add requirements for the locks to be installed so they limit operation of the controls and thereby provide the pilot with an unmistakable warning that the controls are locked at the start of the takeoff roll.

The FAA received comments on this proposal from the GAMA, the JAA, and the ALPA. The ALPA strongly supported the proposed change.

The GAMA believes that the proposal would add to the cost and complexity of the control lock system without a commensurate benefit. The GAMA is unaware of any adverse service history resulting from installed control locks and believes that the current rule provides an adequate level of safety. In support of this position, the GAMA includes an estimated cost of $250,000 to develop a fully automatic gust lock system for a type certificated airplane model.

To evaluate and resolve the GAMA comments, the FAA has reviewed the original conference proposals, numbers 252, 253, and 254. It has also reviewed the record of the public meeting. In response to the GAMA comment concerning any adverse service history, this review shows that the original conference proposals were submitted

because accidents were occurring because of control locks that remained installed during takeoff. The economic analysis of the proposals in the notice also identified this accident service history and showed severe airplane damage, pilot injuries, and possible fatalities.

The FAA is aware that an automatically released control lock system would be costly. The proposal did not mandate the installation of an automatic system, but would add an optional provision that would show the acceptance of such systems.

The JAA stated its assumption that the proposed requirement would not be applicable to external locks. Based on the comments received, the FAA has re-examined the proposal. Since the proposal would have eliminated the current § 23.679(a), external systems that use the red warning ribbons as a means of warning the pilot that the locks are in place would no longer be acceptable. The FAA has determined that there is a need to retain the provision of current § 23.679(a), so that presently used locks and their warning systems remain acceptable. The added provision of § 23.679(a)(2) will make it clear that systems that automatically disengage the locks are also acceptable but not mandatory.

The proposal to limit the operation of the airplane when the locks are engaged is being restated since control locks and their warnings can be overlooked and automatic disengage systems will fail. The FAA believes an additional safeguard is required. By requiring a system that will ensure that airplane operation is limited, the pilot will receive a pre-takeoff warning and thus a hazardous takeoff will not be attempted.

In summary, the FAA has considered the comments and has revised the proposed rule language by retaining the current provisions of § 23.679(a) and § 23.679(a)(1), and by adding the provision for accepting automatically disengaged locking systems as an option. The language in proposed § 23.679(a)(2) to require the control surface to be locked so the pilot receives an unmistakable warning at the start of the takeoff if the locks have not been removed is retained as § 23.679(b). The unmistakable warning required by this paragraph may be a tactile warning that the pilot receives by the feel of the controls. Finally, proposed § 23.679(b) is retained as paragraph (c).

The FAA has determined that these changes are not substantive and will clarify this requirement by providing relief from the provisions identified by the commenters. The FAA adopts § 23.679 with the changes discussed above.

Proposal 56

The FAA proposed to revise § 23.729, paragraphs (f)(1) and (f)(2), by changing the power and flap settings necessary to warn the pilot that the landing gear is not fully extended and locked.

The FAA received two comments on this proposal from the JAA and the ALPA. The ALPA strongly supported the proposed change.

The JAA generally agrees with the proposal. However, the JAA notes that these requirements are liable to produce nuisance warnings when the throttles are closed for descent from a high altitude or when one throttle is pulled back following an engine failure. The JAA suggests that the FAA consider an approach for part 23 gear warning requirements similar to the approaches proposed for part 25 in Notice No. 89–20 (54 FR 34116, August 17, 1989).

The revision of the landing gear warning requirements proposed for part 25 is beyond the scope of this rulemaking. While no action will be taken on this suggestion now, the FAA will consider this suggestion for future rulemaking.

Nuisance warnings concern the FAA, and the language changes proposed in the NPRM should reduce them. Proposed § 23.729(f)(2) would have required a landing gear warning when the flaps are extended beyond the approach setting. That change would eliminate the nuisance warnings occurring when flaps are set "to" the approach flap position. Subsequent to the issuance of the notice it has come to FAA attention that many airplanes have more than one approach flap setting and that the proposal would be unclear as to which approach flap setting should be used as the threshold for the gear warning. Also, if the lower approach flap setting is used, nuisance warnings could occur because that setting is also frequently used for takeoff flaps. To clarify this requirement, the proposal has been revised to require the gear warning when the flaps are extended beyond the maximum approach flap position. The FAA adopts § 23.729 with the changes discussed above.

Proposal 57

The FAA proposed to remove § 23.731(a), which contains a requirement that each main and nose wheel must be approved. Since there is a basic requirement to approve the complete airplane, including all components, parts, and appliances, § 23.731(a) is unnecessary. No comments were received on this proposal, and the FAA adopts § 23.731, as proposed.

Proposal 58

The FAA proposed to remove the current § 23.733 reference to the tire rating assigned by the Tire and Rim Association. This would be accomplished by:

1. Stating that tire ratings must be approved.
2. Requiring that static and dynamic ratings be established.
3. Defining the conditions where those ratings are to be used.

The FAA received comments on this proposal from the GAMA and the JAA. The JAA asks the FAA to explain the undiscussed change in the drag reaction from 0.21W to 0.31W.

At least one publication of part 23 regulations contains a typing error that gave this reaction as 0.21W. The FAA has reviewed the history of this requirement and verified that the value of 0.31W that is in § 23.733(a)(2), as published in the Code of Federal Regulations, is correct.

The GAMA questions the removal of the reference to the Tire and Rim Association and recommends its retention. In the NPRM, the FAA identifies the existence of other organizations whose appropriate rating also would be considered. The FAA adopts § 23.733 as proposed.

Proposal 59

The FAA proposed to remove the first sentence of § 23.737 that states that each ski must be approved. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.737 as proposed.

Proposal 60

The FAA proposed to revise § 23.751 to clarify the buoyancy requirements for the main floats of seaplanes. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.751 as proposed.

Proposal 61

The FAA proposed to remove the words "must be approved" from the main floats design requirements in § 23.753. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.753 without change.

Proposal 62

The FAA proposed to add wording to the hull requirements for seaplanes in § 23.755 to clarify that airplanes must be kept afloat without capsizing. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts

§ 23.755(a), introductory text, as proposed.

Proposal 63

The FAA proposed to revise the § 23.773 requirements for the pilot compartment view to address the environment expected in all the operations requested for certification.

The JAA states that it will consider this change for JAR 23 but that it proposes to retain present paragraph (b) relating to night flight tests. The GAMA contends that the words "must be shown in all operations for which certification is requested," could be interpreted to mean that the same view must be provided for all operations.

The FAA does not agree with the GAMA interpretation. Section 23.773 (a) and (a)(1) requires the pilot compartment view to be sufficiently extensive, clear, and undistorted to allow the pilot to perform the various functions identified in this proposal. The word "sufficiently" is included because the FAA recognizes that the view needed for one operation may differ from the view needed for another. The intent is also shown by the words "sufficiently large" used in § 23.773(b). The FAA adopts § 23.773 as proposed.

Proposal 64

The JAA proposed to clarify the § 23.775 criteria to be used for determining the cleared windshield area that is necessary to ensure safe operation for icing conditions. The proposed new § 23.775 would require that a probable single failure of a transparency heating system may not adversely affect the integrity of the airplane cabin. The FAA received comments on this proposal from the GAMA and the JAA.

The JAA does not find the proposal for § 23.775(f) acceptable for inclusion into JAR 23. The JAA does not provide any suggested changes.

In reviewing this comment, the FAA notes that the proposal for § 23.773 identifies the need for a clear and undistorted view for these same four operations and the ability to "perform any maneuver within the operating limitations of the airplane." If the airplane is approved for operation in known or forecast icing conditions, the requirements of § 23.773 will be applicable. Section 23.775(f) should be the same as § 23.773. Accordingly, § 23.775(f) is revised to be the same as § 23.773.

The JAA also believes that transparency heating systems, covered by proposed § 23.775(g), should be certificated under the principles of § 23.1309. The FAA notes that § 23.1309 applies to all systems, as defined by § 23.1309(f), and would apply to transparency heating systems. The provisions of the proposal for § 23.775(g) identify specific hazards that could occur. These specific hazards would have catastrophic consequences and must be avoided through the use of appropriate designs.

The other commenter, GAMA, notes that its comments on proposal 63 also apply to this proposal to clarify criteria for determining cleared windshield areas. The FAA addresses the concern about the amount of cleared windshield under proposal 63. The response is also applicable to the cleared area needed for the operations identified in this proposal. The FAA adopts § 23.775 with the change discussed above.

Proposal 65

The FAA proposed that § 23.851 be revised to require a hand fire extinguisher to be located in the pilot's compartment of all airplane categories. This proposal would also add minimum standards for hand held fire extinguishers. The FAA received comments on this proposal from the JAA and the GAMA.

One commenter, JAA, believes the requirements in current § 23.851, paragraphs (a) and (b), is more appropriate for the operating rules.

The FAA does not agree with this commenter's position. It is incorrect to allow an airplane to be certificated and not include the equipment required for the airplane to be placed in operation. When this occurs, the new owner/operator must then install the required equipment. Such an installation would not only need to meet the operating rules but also would need to meet the requirements of §§ 23.851 and 23.561(b)(3). Because the operator may not have the structural design data for the airplane, finding a suitable location to install a fire extinguisher meeting the load factors of § 23.561 could be difficult. Such installations are more easily accomplished by the airframe manufacturer. The requirements of current § 23.851(a) and (b) will be retained.

The JAA also notes that proposed § 23.851(c)(2) does not ban extinguishers that use toxic agents. The JAA believes that such agents should be banned. The FAA does not agree with this position. The first consideration in evaluating the use of a hand fire extinguisher is its effectiveness in putting out any in-flight fire. If the best agent for the type of fire that may occur causes toxic gas, the concentration of that gas that would result from a completely discharged extinguisher and its hazard to the occupants must be evaluated. If the concentration would be hazardous, it may still be possible to use the extinguisher if the gas can be vented from the area in a short time, and if there would be no adverse affect upon the occupants. To ban such fire extinguishers could lower the level of safety of the airplane by reducing the chance the in-flight fires can be extinguished. The FAA plans no action to ban the use of such fire extinguishing agents at this time.

The other commenter, GAMA, believes the proposal for § 23.851(a), requiring a hand fire extinguisher to be located conveniently in the pilot's compartment, is too restrictive. The GAMA points out that the pilot's compartment is usually small, therefore, it is frequently difficult to find suitable space for a fire extinguisher. The GAMA recommends revising § 23.851(a) to read, "There must be at least one hand fire extinguisher located within easy access of the pilot while seated."

The FAA agrees that the recommended revision would require the same pilot access to the fire extinguisher as intended by the proposal. Because this revision allows the fire extinguisher to be located in the cabin, where the pilot can reach it, it could be confused with the extinguisher required for the cabin. To identify the applicable extinguisher, the proposal is revised to read, "There must be at least one hand fire extinguisher for use in the pilot compartment that is located within easy access of the pilot while seated."

The GAMA also recommends that the FAA develop more explicit guidance criteria concerning the acceptable size, agent, etc., than is now contained in the operating rules in § 91.513. The FAA agrees that better guidance needs to be developed, and will consider future advisory material to develop such guidance.

The FAA observes that § 91.513(c)(3) requires at least one hand fire extinguisher located in the passenger compartment of each airplane accommodating more than six passengers. Accordingly, this operating rule and the NPRM are not compatible. If the requirements in the notice were adopted as proposed, normal category airplanes that accommodate more than six passengers could be certificated without a passenger compartment fire extinguisher. Then, operators of those airplanes would be required to have an extinguisher installed.

The FAA discussed, in the NPRM, the burden that would fall on the operator if that operator needed to install a new fire extinguisher that also must meet other current airworthiness

requirements. For consistency with § 91.513(c)(3), the final rule § 23.851 has been revised to require a fire extinguisher in the cabin of airplanes that accommodate more than six passengers. The FAA adopts § 23.851 with the changes discussed above.

Proposal 66

The FAA proposed to clarify the existing requirement of § 23.865 by excluding those portions of the engine mount certificated with the engine and by addressing the allowable damage expected on engine isolators. Since the only commenter, JAA, agrees with this proposal, the FAA adopts § 23.685 as proposed.

Proposal 67

The FAA proposed a change to § 23.1507 to establish an operating maneuvering speed (V_O) different from the design maneuvering speed (V_A) established by § 23.335(c). V_O is the maximum speed where, at any given weight, the pilot may apply full control excursion without exceeding the design limit load factor.

The one commenter, the JAA, believes that this new concept of V_O needs further discussion. The JAA also notes that, while proposed § 23.1507(a), establishing an operating limitation, is correctly located, § 23.1507(b), which defines V_O, should be moved to become § 23.335(d) while retaining the existing definition of V_A, design maneuvering speed, at § 23.335(c).

The FAA disagrees with moving the V_O definition to § 23.335, since it would put an operational definition in the design section of part 23. The V_O definition in § 23.1507 is consistent with the requirements of § § 23.1505 and 23.1511, namely, that the relationships between "operating" speeds and "design" speeds are established. The comment has caused the FAA to reexamine and reword proposed § 23.1507. The revised wording deletes the definitions of computed stall speed (V_S) and the limit maneuvering load factor (n) and utilizes those already contained in § 23.335. The final rule section heading includes the word "operating" to maintain a distinction from the design maneuvering speed of § 23.335. The FAA adopts § 23.1507 with the change discussed above.

Proposal 68

The FAA proposed to add a new § 23.1516 that establishes an intentional one-engine-inoperative speed for pilot training.

The one commenter, the JAA, refers to its comments on proposed § 23.149. The FAA agrees that V_{SSE} should not be established as a limitation; therefore, it deletes the proposed § 23.1516.

Proposal 69

The FAA proposed to change § 23.1521 to ensure that powerplant limitations established for airplane certification do not exceed those established during the certification of the engine or the propeller, and are in accord with limitations used in determining compliance with this part.

The one commenter on this proposal, JAA, notes that examples from FAA experience would be useful in the preparation of interpretations. The FAA's principal experience involves derated engines and some turbopropeller engine installations that have a higher maximum power at cruise than at takeoff. The FAA adopts § 23.1521 as proposed.

Proposal 70

The FAA proposed to add a new § 23.1522 that specifies auxiliary power unit (APU) limitations in the operating limitation section of the AFM.

The one commenter, JAA, believes that, without requirements addressing APU's in subpart E of part 23, the introduction of this proposal on operating limitations is premature.

The FAA points out that APU's have been addressed in § 23.901 as amended in Small Airplane Airworthiness Review Program Amendment No. 3, Amendment 23–43 (58 FR 18958, April 9, 1993). The FAA adopts § 23.1522 as proposed.

Proposal 71

The FAA proposed to change § 23.1525 to clarify the existing rule which is vague and brief, by requiring the establishment and inclusion of kinds of operations authorized in the AFM, as specified by § 23.1583(h).

The one commenter, JAA, notes that existing § 23.1525 and proposed JAR 23.1525 are statements rather than requirements. The JAA believes that what is needed is a requirement that establishes the kinds of operations authorized and the resulting airplane operational limitations. The JAA suggests a slightly modified version of proposed JAR 23.1525, as follows: "The kinds of operation authorized (such as VFR, IFR, day or night) and the meteorological conditions (such as icing) and the category in which the aeroplane is eligible for certification, appropriate to the installed equipment, must be established." The JAA believes that the requirement to furnish this information in the AFM belongs in § 23.1583(h) and that a cross-reference, as proposed in § 23.1525, is unnecessary.

The FAA concurs with the JAA's comment and the final rule language is changed to closely follow the JAA's suggested version. The FAA adopts § 23.1525 with the change discussed above.

Proposal 72

The FAA proposed to change § 23.1527 to clarify that the maximum operating altitude allowed for any part 23 airplane must be established based on those limitations determined by flight, structural, powerplant, functional, or equipment characteristics.

The one commenter, JAA, suggests reversing the order of § 23.1527(a) and (b) for clarity. The FAA concurs and adopts § 23.1527 with this change.

Proposal 73

The FAA proposed to change § 23.1545 by deleting current paragraph § 23.1545(b)(6) which requires a red radial mark on the airspeed indicator. This mark identifies the minimum control speed with the critical engine inoperative, V_{MC}, on multiengine airplanes.

The one commenter on this proposal, JAA, states that the red radial line on the airspeed indicator at V_{MC} offers useful guidance to the pilot for this class of airplane and should be retained.

For the reasons given by the JAA, the FAA agrees that the red radial should be retained. The proposed amendment to § 23.1545 is withdrawn.

Proposal 74

The FAA proposed to change § 23.1549 to expand the current powerplant instrument requirements to include auxiliary power units (APU).

The one comment from JAA on this proposed change refers to the JAA's comments on proposed changes to § 23.1522 in which the JAA opposed referencing APU in the absence of requirements addressing APU in subpart C.

As previously stated, since the Small Airplane Airworthiness Review Program Amendment No. 3, Amendment 23–43 (58 FR 18958, April 9, 1993) addresses APU, § 23.1549 is adopted as proposed.

Proposal 75

The FAA proposed to change § 23.1557 to clarify the marking requirements for filler openings and to require a marking for the coolant filler opening similar to the requirements for fuel and oil. The FAA also proposed deleting § 23.1557(f) because the AFM and fuel quantity indicator provide this information to the pilot.

The one commenter, JAA, concurs with the proposed changes, except that the JAA believes that § 23.1557(c)(2), which contains marking requirements for oil filter openings, should end with the words "and the permissible oil designations." While the FAA agrees, after further review, the FAA has determined that, as with fuel filler marking, the oil filler marking should permit reference to the AFM as an alternative. The proposed § 23.1557 is adopted with the change discussed above.

Proposal 76

The FAA proposed to change § 23.1563(a) by substituting V_o for V_A in conjunction with the change to § 23.1507.

The one commenter, JAA, states that V_o should be further considered later, in the light of discussions on proposed § 23.1507. The concept of V_o was discussed under proposal 67 relating to § 23.1507, and for the reasons stated there the FAA adopts § 23.1563(a) as proposed.

Proposal 77

The FAA proposed to change § 23.1581(f) to establish a new requirement for providing a means to record updates to the AFM.

The FAA received comments on this proposal from the ALPA and JAA. The ALPA strongly supports the proposed change.

The JAA agrees with a requirement for a means of recording the amendment status of the AFM, but believes that a "log of revisions" is only one acceptable means of compliance and that a list of effective pages is equally acceptable.

The FAA agrees with the commenter and has determined that the rule text permits the suggested alternative. A change in the heading to read "Revisions and amendments" clarifies this point. The proposed § 23.1581(f) is adopted with the change discussed above.

Proposal 78

The FAA proposed an introductory sentence to § 23.1583. During the type certification process, there are limitations required other than those specified by this section. The FAA proposed to expand § 23.1583(h) to identify the kinds of operation that were type certificated, such as icing. Also, the section was proposed to be revised to identify installed equipment that must be operable for aircraft operation in icing conditions. The NPRM also proposed a new § 23.1583(m). Although § 23.1523, Load distribution limits, generally covers it, the effects of an asymmetric fuel load are not emphasized. The effects of lateral fuel imbalance are not usually addressed although the lateral center of gravity limits must be furnished in the AFM.

The FAA received comments on this proposal from the GAMA and the JAA. The commenters on the proposal for § 23.149, which would establish a safe, intentional, one-engine-inoperative speed, V_{SSE}, as a limitation in § 23.1583, oppose the inclusion of V_{SSE} in § 23.1583(a)(2). In response to these comments, the FAA agrees that this speed should not be established as a limitation and V_{SSE} is removed from § 23.1583(a)(2). Revisions to § § 23.149 and 23.1585 require manufacturers to determine a safe one-engine-inoperative speed and provide this information in the AFM.

The JAA also notes that the words "of each airplane" in the introductory statement are not necessary and should be removed. The FAA concurs. While reviewing comments on § 23.1583(a)(2), the FAA noted that since V_A is removed as an airspeed limitation in § 23.1507, V_A should also be removed from § 23.1583(a)(2).

The JAA states that, having established the kinds of operation authorized under § 23.1525 (VFR, IFR, day, night, and others), § 23.1583(h) is merely to require that this information be made available in the AFM. The JAA suggests words based on JAR 23.1583, as follows:

"The Aeroplane Flight Manual must contain:

* * * * *

(h) Kinds of operation. A list of the kinds of operation to which the aeroplane is limited under 23.1525 for which approval has been given."

If the FAA retains proposed § 23.1583 as proposed, the JAA suggests replacing "is requested" with "has been given." The JAA also notes the need to identify the required operational status of installed equipment, where this may affect operation limitations, will be proposed as an extension to JAR 23.1583(i).

The GAMA states that "The last sentence of proposed § 23.1583(h) is confusing and subject to multiple interpretations. Certain equipment, such as deicing equipment, might be appropriately included in a listing that affects operating limitations (flight into known icing in this example) but, reference to the kinds of operation for which approval is requested may lead to confusion and continue the argument that has been going on for more than ten years with respect to minimum equipment lists versus what is required (required equipment lists) for a particular operation. Most operators of part 23 airplanes, including operators of single-engine personal use airplane, have traditionally equipped their airplanes according to their personal operational requirements and preferences. This will become even more true in the near future as alternate sole source navigational systems are approved. The proposed wording of the last sentence of paragraph 23.1583(h) appears to require that a detailed minimum equipment list be included in the limitations section of the AFM. This in turn requires a supplemental type certificate for *any* variation from the manufacturer's standard installed equipment list. Such a list might well be appropriate as a 'required' equipment list for various kinds of operations and may be interpreted to provide operational authority for such operations. However, it is more likely that it will perpetuate the confusion of what must be operative and what may be inoperative during a particular flight. This item needs further review."

The FAA agrees that reference in § 23.1583(h) to the kinds of operation within § 23.1525 is appropriate instead of repeating examples of kinds of operations. This change and the other change suggested by the JAA are made in the final § 23.1583(h).

The FAA does not agree with the GAMA that the last sentence in § 23.1583(h) is confusing and subject to multiple interpretation. A Kind of Equipment List (KOEL) has been part of the limitations for many years. A Minimum Equipment List (MEL) is an operational requirement covered by part 91 and the relationship between a KOEL and an MEL is well established and in use by the public.

Except for editorial changes, suggested by the JAA, and minor clarifying editorial changes § 23.1583(h) is adopted as proposed.

Proposal 79

The FAA proposed to change § 23.1585 to revise flight procedures and scheduled speeds that are essential for the safe operation of the airplane and the achievement of the scheduled performance. Additionally, the procedures for starting engines in flight are considered necessary for all multi-engine airplanes; therefore, the FAA proposed to eliminate the reference to commuter category and to turbine engines.

The FAA received comments on this proposal from the JAA and the CAA-UK. The CAA-UK comment addresses conference proposals that the FAA rejected and, as previously stated, this preamble does not address comments on

rejected conference proposals. The JAA notes that the proposed changes align closely with JAR 23.

The JAA believes that GAMA Specification No. 1 is acceptable and fears that certain of the proposed changes may conflict with it. The FAA recognizes that GAMA Specification No. 1 may need to be revised.

Also, the JAA states that it is "unclear from what the operating procedures 'must be * * * segregated'" in the AFM.

With the addition of abnormal procedures to normal and emergency procedures covered under the present rule, the FAA's intent is that the AFM be organized so that abnormal procedures are clearly separated from normal procedures, etc.

The JAA notes that procedures for maintaining and recovering control following engine failure above or below V_{MC} are still required in spite of the NPRM explanation that these are within the scope of basic airmanship The FAA concurs with the JAA that the explanation in the NPRM shows that recovering of control above and below V_{MC} is within the scope of basic airmanship These procedures were inadvertently left in the text of the proposed rule as § 23.1585(c)(5); therefore, proposed paragraph (c)(5) is omitted from the final rule.

The JAA states: "In spite of the explanation, FAR 23.1585(d) through (g) appear to remain unchanged although (f), not required for JAR 23, requires for all aeroplanes that a restart envelope must be established. In § 23.1585, however, the operating procedures for restarting of the engine(s) must be furnished for multi-engined aeroplanes only This inconsistency will lead to confusion."

The JAA comment on § 23.1585(d) through (g) indicates that the text of the NPRM explanation may have been misunderstood. The NPRM explanation noted that non-flight items were considered for the NPRM but not addressed as the NPRM was aimed at flight items. Thus, the FAA did not intend to change § 23.1585(d) through (g).

The FAA does not understand the JAA's reference to § 23.1585(f) with respect to an engine restart envelope for all airplanes, since § 23.1585(f) concerns unusable fuel and indicator marking. Nor does the FAA understand the inconsistency suggested by the JAA since the proposed restart procedures are in paragraph (c) which only applies to multiengine airplanes.

In response to comments on proposed § 23.235, as discussed under that section, the FAA is amending § 23.1585(a) to add a requirement for seaplane handling procedures and demonstrated wave height.

Also as discussed in proposal 12, the FAA decided that V_{SSE} should not be a limitation; therefore, a new § 23.1585(c)(6) is added to require that V_{SSE} be furnished to the pilot in the AFM. The FAA adopts § 23.1585 with the changes discussed above.

Proposal 80

The FAA proposed to reorganize and simplify § 23.1587, which specifies the performance information that must be provided in the AFM.

The one commenter, JAA, states that while the proposed changes move considerably towards the proposed text of JAR 23.1587, the JAA has already decided that "the calculated approximate effect" on performance of altitude and temperature is unacceptable.

The JAA states that the maximum temperature at which compliance with the cooling requirements has been shown is wrongly located in the AFM and that it should appear as a limitation in § 23.1521(e), as in proposed JAR 23. Unlike proposed JAR 23.1587, the JAA notes that there is no proposal to address the effect of factored winds, runway slope, or grass surfaces on takeoff and landing distances or to schedule a flight-over-water speed. The JAA believes data are necessary for meaningful compliance with even the simplest performance operating rules.

Since one of these items were proposed in the NPRM, it is inappropriate for the FAA to include them in the final rule and the proposed § 23.1587 is adopted as proposed.

Proposal 81

The FAA proposed to amend § 23.1589(a) to publish the weight and location of each item of equipment that can be easily removed, relocated, or replaced.

Since the only comment received, from the JAA, agrees with the proposed change, the FAA adopts § 23.1589, as proposed.

Proposal 82

The FAA proposed to amend appendix D by adding a new paragraph (c), which supports a new requirement in § 23.479(c) concerning dynamic spring-back of the landing gear.

Since the only comment received, from the JAA, agrees with the proposed change, appendix D is adopted as proposed.

Proposal 83

The FAA proposed to add a new appendix H that supports amended § 23.521.

Since the only comment received, from the JAA, agrees with the proposed change, appendix H is adopted as proposed.

Turbojet Engines

While not proposing any rule change in the NPRM, the FAA requested and received comments about changing part 23 to allow the use of turbojet engines on commuter category airplanes Comments were received from the ALPA and from the JAA. The ALPA opposes the use of turbojet engines and believes that the certification of turbojet airplanes should remain under part 25 requirements.

The JAA states that since basic FAR/JAR 23 includes turbojets, "there is no fundamental reason for excluding them from commuter category" airplanes. The JAA believes that turbojets provide enhanced reliability compared to reciprocating engines. The JAA also believes that turbojet engines provide better airplane handling characteristics, with one engine inoperative, than any propeller driven airplane (reciprocating or turbine engine powered). The JAA recognizes that part 23 is intended to provide a simplified airworthiness code appropriate to simple airplane designs. The JAA recognizes that the use of turbojet engines has the potential to convey a performance capability involving design complexities not envisioned in formulating FAR 23. The JAA states that it is not opposed to the use of turbojet engines on airplanes certificated to commuter category requirements, subject to a review of requirements related to a higher performance capability (speed and altitude).

Performance Limitations Based on Weight, Altitude and Temperature (WAT)

While not proposing any rule change in the NPRM, the FAA requested comment on the need for WAT criteria, as information or as a limitation on piston-powered twin-engine part 23 airplanes. It also requested comments about WAT criteria on turbine-powered twin-engine part 23 airplanes, specifically during takeoff and landing. The FAA received comments from the JAA, the GAMA, and the ALPA. The ALPA supports the requirement that WAT information be furnished during the certification process. The ALPA cites the variety of operational uses, including scheduled air carrier and

regional airline service, and the need for "one level" of safety as justification. The GAMA "believes that WAT information is useful but certainly not the only way to present operating data for any airplane" and that making WAT criteria an airplane or operating limitation for part 23 airplanes is "an unnecessary and unjustified expansion or redirection of operating criteria." The JAA generally supports the use of WAT criteria for part 23 airplane certifications. The JAA believes that the chance of a single-engine failure on any airplane is high. Also, the JAA warns that safety considerations include airplane occupants and personnel on the ground. According to the JAA, transport category airplanes do this by limiting the operation of the airplane. Beyond the point where takeoff can be rejected, one-engine-inoperative climb must guarantee obstacle clearance. The JAA recognizes the need for generally similar requirements for commuter category airplanes.

The JAA believes that a continued flight capability would preclude the operation of single-engine airplanes. Also, the JAA believes that airplane size and stall speed provide characteristics that permit safe landings.

The JAA points out that between the two extremes within present part 23 (from single-engine airplanes to commuter category airplanes) lie the light twin-engine reciprocating and turbine engine airplanes, ranging from four to nine seats and 4,000 to 12,500 pounds. The JAA notes that, for these types of airplanes, it would be burdensome to require compliance with full net flight path obstacle clearance. In the JAA's opinion, a safe forced landing becomes less satisfactory with increased takeoff weight, involving longer stopping distances even for the same landing speed. The JAA notes that twin-engine airplanes have other significant adverse characteristics compared to single-engine airplanes. First, an engine failure is twice as probable, second, asymmetric power demands immediate pilot action.

The JAA also points out that the inability to continue flight with one engine inoperative creates the following situation: The chance of a second engine failure is increased; a suitable site for an emergency landing is reduced; and the pilot resists the inevitable forced landing and tries to maintain flight. Training, under more favorable conditions, may have taught the pilot to expect success in these situations. In unfavorable conditions, attempts to maintain flight lead to loss of airspeed at high asymmetric power and, commonly, loss of directional control that results in a stall/spin accident.

The JAA advocates certification and operations criteria for multiengine airplanes that blend the performance requirements for a single-engine airplane and a transport category airplane. The JAA believes that the requirements accept a limited period for risk just before and just after liftoff where engine failure may not be fully accounted for. The JAA believes that the application of WAT limits clearly accounts for actual conditions, although the climb gradient requirements are lower than those of FAR/JAR 25.

The JAA recommends using compensating operational criteria, like transport category airplanes use, for the lower performance commuter category airplanes. Cockpit visibility and a reasonable maximum speed provide adequate compensation for takeoff so the pilot can see and avoid obstacles as the airplane returns for landing. The JAA does not propose a distinction between reciprocating and turbine engines. Where applicable, the WAT criteria should be imposed, in the JAA's opinion, as limitations through the Airplane Flight Manual (AFM).

The JAA does not believe that such proposals would involve costs disproportionate to the benefits. The JAA suggests that the comment from the airworthiness conference, that such criteria would "eliminate the certification of an entire class of airplanes," is an exaggeration. The proposals are achievable, in the JAA's view, by typical modern light twin-engine airplanes with realistic payloads, particularly the more significant executive/air taxi airplanes. It is the JAA's opinion that adopting this concept would instill a greater awareness of performance consideration in pilots from an early stage of their training.

The JAA also believes that the climb and handling qualities requirements of present §§ 23.65 and 23.67 are illogical and unreasonable. The JAA recommends using WAT criteria, so it applies equally to all airplane operations, because it offers improved airplane capability.

The JAA points out that the manufacturers of "WAT type" airplanes routinely determine performance under a wide range of conditions. The JAA also notes that flight manuals produced to the widely accepted General Aviation Manufacturers Association (GAMA) specification already contain performance data beyond the minimum requirements of part 23. Additional testing or scheduled data create no additional costs in the JAA's opinion.

The JAA notes that present draft JAR 23 applies WAT limits only to piston-engine airplanes above 6,000 pounds and turbine-engine airplanes and that it has been proposed to the JAR Operations Group that WAT limits be applied to all JAR 23 airplanes in commercial operation.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, or to have a significant adverse effect on competition.

The FAA has determined that this rule is not major as defined in the Executive Order. This section contains a summary of the regulatory evaluation, a regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act, and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Cost-Benefit Analysis

Costs

Of the rule's 79 amendments, only six will result in more than negligible costs of compliance for airplane manufacturers. Each of these six amendments requires additional testing or analysis, costing about $5,800 per airplane certification. One of the amendments, § 23.851, also requires a fire extinguisher in all part 23 airplanes that are produced under future certifications. Other regulations already require fire extinguishers in airplanes with greater than six passengers and in commuter airplanes. For purposes of estimating the cost of this requirement, the FAA assumes a worst case scenario

under which all future part 23 certifications will involve airplanes with six or fewer passengers. The FAA estimates that a fire extinguisher and a suitable bracket cost $40.

The FAA assumes that an average of five airplanes will be certified under part 23 each year during the period of analysis from 1993–2012. Based on discussions with industry, the FAA also assumes that, during the first year following certification, 60 airplanes will be produced per certification. In the second, third, and fourth years following certification, 120 airplanes per year are assumed to be produced. In the fifth and subsequent years, 100 airplanes per year are assumed to be produced. Based on this assumption, the costs of the rule over the 20-year period of analysis total $3.7 million ($1.5 million discounted) or about $48 per airplane produced.

Benefits

The benefits of the rule are two-fold. First, the rule is expected to enhance safety. An examination of accidents that might have been prevented by this rule include those involving control locks that were not removed prior to flight (seven accidents over a five-year period with five fatalities, three airplanes destroyed, and four substantially damaged) and multiengine stall/spin accidents (four accidents over eight years, resulting in nine fatalities and all airplanes destroyed). Had those accidents been avoided by the rule, the benefits would be $5.4 million per year.

Other safety benefits will be realized from the rule. The requirement to demonstrate 1.5g pitch maneuver capability will ensure that a pilot can make 30-degree banked turns and slow down from potential overspeed conditions without encountering low-speed buffeting. Determination of spin-up and spring-back loads will ensure that landing gear fore and aft drag loads, which affect both landing gear and wing strength, will be considered in the design of new part 23 airplanes. The requirement that airplanes be free from flutter will ensure that this dangerous phenomenon does not occur, even after fatigue failure. The rule also requires that additional information about procedures, speeds, and configurations for a glide following an engine failure for single-engine airplanes and procedures for restarting engines in flight for multiengine airplanes be included in the airplane flight manual. This information can lessen the consequences of emergency landings after engine failures. Although the FAA has not quantified the benefits of these requirements, the benefits exceed the generally minor costs.

There were 108 recorded accidents that occurred from January 1989 through April 1991 in which there was fire after impact. Although the number of fatalities and injuries in these accidents that could have been avoided cannot be determined, it is likely that the presence of a fire extinguisher could have mitigated the consequences in at least some of these fires.

Less than $194,000 in average annual accident losses needs to be averted annually to render this rule cost-beneficial. For those control system lock and multiengine stall/spin accidents that could have been prevented or mitigated by the provisions of this rule, the annual losses averaged $5.4 million. This exceeds the $194,000 threshold value, thus, the rule is cost-beneficial. In addition, the avoidance of fatalities because of the presence of fire extinguishers in affected airplanes will further increase the benefits. Finally, other requirements, such as those discussed above, will provide additional safety benefits.

Another valuable additional benefit of this rule is that it comports to a large extent with international requirements, particularly the Joint Aviation Requirements (JAR) of the Joint Aviation Authorities (JAA). The creation of common international standards, or harmonization, will benefit manufacturers in the U.S. and those in the countries of the JAA.

The rule modifies certain testing requirements and allows optional evaluations and analysis. This may result in cost savings. However, the FAA does not have sufficient information to quantify such savings.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, contains criteria for determining whether a proposed or existing rule has a significant economic impact on substantial number of small entities.

The entities that will be affected by this rule are the manufacturers of airplanes certificated under part 23. Based on the Regulatory Flexibility Criteria and Guidance, the size threshold for manufacturers is 75 or fewer employees and the cost threshold is $18,200 in 1992 dollars.

Approximately 14 affected manufacturers are considered to be small entities. The annual cost of the rule per certification during peak production is estimated to be $5,700, which is substantially less than the cost threshold limit cited above. Therefore, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will have little or no impact on international trade. Both foreign and domestic manufacturing seeking type certification in the United States will be required to comply with the rule. The Joint Aviation Authorities (JAA) is including many of the sections in this rule to harmonize with U.S. aviation regulations. It is expected that other countries will also adopt these requirements.

Federalism Implications

The regulations 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 regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA is revising the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes as a result of comments received in reply to the Small Airplane Airworthiness Review Program Notice No. 4 dated June 28, 1990. The notice, which addresses airframe and flight items, was published as a result of recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984 in St. Louis, Missouri. Originally, the proposals reflected updated safety standards and advancements in technology while reducing the regulatory burden for some requirements and maintaining an acceptable level of safety. Harmonization with the European Joint Aviation Authorities Joint Airworthiness Requirements became a dominant factor at the close of the extended Notice of Proposed Rulemaking comment period, December 14, 1990. Considerable effort was invested to harmonize these airworthiness standards because aircraft industry estimates indicate reduced overall certification costs. These airworthiness standards will continue to provide adequate levels of safety for

small airplanes used in both private and commercial operations.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation 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. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

Issued in Washington, DC, on July 28, 1993.

Joseph N. Del Balzo,

Acting Administrator.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 23 of the Federal Aviation Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Section 23.23 is revised to read as follows:

§ 23.23 Load distribution limits.

(a) Ranges of weights and centers of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain lateral load distribution limits that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution limits may not exceed any of the following:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

3. Section 23.25 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 23.25 Weight limits.

(a) * * *

(2) Not less than the weight with—

(i) Each seat occupied, assuming a weight of 170 pounds for each occupant for normal and commuter category airplanes, and 190 pounds for utility and acrobatic category airplanes, except that seats other than pilot seats may be placarded for a lesser weight; and

(A) Oil at full capacity, and

(B) At least enough fuel for maximum continuous power operation of at least 30 minutes for day-VFR approved airplanes and at least 45 minutes for night-VFR and IFR approved airplanes; or

* * * * *

4. Section 23.33 is amended by revising paragraph (d)(2) to read as follows:

§ 23.33 Propeller speed and pitch limits.

* * * * *

(d) * * *

(2) With the governor inoperative, the propeller blades at the lowest possible pitch, with takeoff power, the airplane stationary, and no wind, either—

(i) A means to limit the maximum engine speed to 103 percent of the maximum allowable takeoff r.p.m., or

(ii) For an engine with an approved overspeed, a means to limit the maximum engine and propeller speed to not more than the maximum approved overspeed.

5. Section 23.45 is amended by removing paragraph (e), by redesignating paragraph (f) as paragraph (e), by amending the cross-reference in newly redesignated paragraph (e)(2) from (f)(3) to (e)(3), by amending the cross-references in newly redesignated paragraph (e)(5) introductory text from (f)(3) and (f)(4) to (e)(3) and (e)(4), respectively, and by revising paragraphs (b) and (d) to read as follows:

§ 23.45 General.

* * * * *

(b) The performance data must correspond to the propulsive power or thrust available under the particular ambient atmospheric conditions, the particular flight condition, and the relative humidity specified in paragraph (d) of this section.

* * * * *

(d) The performance, as affected by engine power or thrust, must be based on a relative humidity of—

(1) 80 percent, at and below standard temperature; and

(2) 34 percent, at and above standard temperature, plus 50°F.

(3) Between the two temperatures listed in paragraphs (d)(1) and (d)(2) of this section, the relative humidity must vary linearly.

* * * * *

6. Section 23.53 is amended by revising paragraphs (a), (b)(1)(ii), and (b)(2) to read as follows:

§ 23.53 Takeoff speeds.

(a) For multiengine normal, utility, and acrobatic category airplanes, the rotation speed, V_R, may not be less than V_{MC} determined in accordance with § 23.149.

(b) * * *

(1) * * *

(ii) Any lesser speed, not less than 1.2 V_{S1}, that is shown to be safe for continued flight or land-back, if applicable, under all conditions, including turbulence and complete failure of the critical engine.

(2) For single-engine airplanes, any speed, not less than 1.2 V_{S1}, that is shown to be safe under all conditions, including turbulence and complete engine failure.

* * * * *

7. Section 23.65 is amended by revising paragraph (a) to read as follows:

§ 23.65 Climb: All engines operating.

(a) Each airplane must have a steady angle of climb at sea level of at least 1:12 for landplanes or 1:15 for seaplanes and amphibians with—

(1) A speed not less than 1.2 V_{S1};

(2) Not more than maximum continuous power on each engine;

(3) The landing gear retracted;

(4) The wing flaps in the takeoff position; and

(5) The cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 through 23.1047.

* * * * *

8. Section 23.141 is revised to read as follows:

§ 23.141 General.

The airplane must meet the requirements of §§ 23.143 through 23.253 at all practical loading conditions and operating altitudes for which certification has been requested, not exceeding the maximum operating altitude established under § 23.1527, and without requiring exceptional piloting skill, alertness, or strength.

9. Section 23.143 is amended by removing the word "Dive" in paragraph

(a)(4) and inserting the word "Descent" in its place, and by revising the force table in paragraph (c) to read as follows:

§ 23.143 General.

* * * * *

(c) * * *

Values in pounds of force as applied to the stick, control wheel, or rudder pedals	Pitch	Roll	Yaw
(a) For temporary application:			
Stick	60	30	.....
Wheel (Two hands on rim)	75	60	.....
Wheel (One hand on rim)	50	.....	.....
Rudder Pedal	.....	.....	150
(b) For prolonged application	10	5	20

10. Section 23.145 is revised to read as follows:

§ 23.145 Longitudinal control.

(a) With the airplane as nearly as possible in trim at 1.3 V_{S1}, it must be possible, at speeds below the trim speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous power on each engine;

(2) Power off; and

(3) Wing flap and landing gear—

(i) retracted, and

(ii) extended.

(b) No change in trim or exertion of more control force, as specified in § 23.143(c), than can be readily applied with one hand for a short period of time may be required for the following maneuvers:

(1) With the landing gear extended, the flaps retracted, and the airplanes as nearly as possible interim at 1.4 V_{S1}, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4V_{SO} to 1.4 V_{SO}:

(i) With power off; and

(ii) With the power necessary to maintain level flight in the initial condition.

(2) With the landing gear and flaps extended—

(i) With power off and the airplane as nearly as possible in trim at 1.3 V_{SO}, quickly apply takeoff power or thrust and retract the flaps as rapidly as possible to the recommended go-around setting while attaining and maintaining, as a minimum, the speed used to show compliance with § 23.77. Retract the gear when positive rate of climb is established; and

(ii) With power off and in level flight at 1.1V_{SO}, and the airplane as nearly as possible in trim at 1.2 V_{SO}, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous power. If gated flap positions are provided, the airplane may be retrimmed between each stage of retraction, and the airplane may accelerate to a speed that is 1.1 times the minimum steady flight speed obtained for the flap gate position.

(3) With maximum takeoff power, landing gear retracted, flaps in the takeoff position, and the airplane as nearly as possible in trim at VV_{FE}, appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining constant speed.

(4) With power off, flaps and landing gear retracted, and the airplane as nearly as possible trim at 1.4 V_S, apply takeoff power rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended, and the airplane as nearly as possible in trim at 1.4 V_{SO}, obtain and maintain airspeeds between 1.1 V_{SO} and either 1.7 V_{SO} or V_{FE}, whichever is lower.

(c) At speeds above V_{MO}/M_{MO} and up to V_D/M_D, a maneuvering capability of 1.5 g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than 1.3 V_{SO}, during a power-off glide with landing gear and wing flaps extended, for any weight of the airplane, up to and including the maximum weight.

(e) By using normal flight and power controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane, as follows:

(1) For single-engine and multiengine airplanes, without the use of the primary longitudinal control system.

(2) For multiengine airplanes—

(i) Without the use of the primary directional control; and

(ii) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

11. Section 23.147 is revised to read as follows:

§ 23.147 Directional and lateral control.

For each multiengine airplane, it must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 V_{S1} with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in § 23.143 need not be exceeded), with the—

(a) Critical engine inoperative and its propeller in the minimum drag position;

(b) Remaining engines at maximum continuous power;

(c) Landing gear—

(1) Retracted; and

(2) Extended; and

(d) Flaps in the most favorable climb position.

12. Section 23.149 is amended by replacing the word "recovery" in paragraph (d) with the words "the maneuver" and by revising paragraphs (a), (b), and (c), to read as follows:

§ 23.149 Minimum control speed.

(a) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with that engine still inoperative and then maintain straight flight at the same speed with an angle of bank of not more than 5 degrees. The ability to maintain straight flight at V_{MC} in a static condition with a bank angle of not more than 5 degrees must also be demonstrated. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure, with respect to controllability expected in service.

(b) V_{MC} may not exceed 1.2 V_{S1}, where V_{S1} is determined at the maximum takeoff weight, with—

(1) Maximum available takeoff power or thrust on the engines;

(2) The most unfavorable center of gravity;

(3) The airplane trimmed for takeoff;

(4) The maximum sea level takeoff weight, or any lesser weight necessary to show V_{MC};

(5) The airplane in the most critical takeoff configuration, with the propeller controls in the recommended takeoff position and the landing gear retracted; and

(6) The airplane airborne and the ground effect negligible.

(c) A minimum speed to intentionally render the critical engine inoperative must be established and designated as the safe, intentional, one-engine-inoperative speed, V_{SSE}.

* * * * *

13. Section 23.153 is revised to read as follows:

§ 23.153 Control during landings.

It must be possible, while in the landing configuration, to safely

complete a landing without exceeding the one hand control force specified in § 23.143(c) following an approach to land—

(a) At a speed 5 knots less than the speed used in complying with the requirements of § 23.75 and with the airplane in trim, or as nearly as possible in trim, and without the trimming control being moved throughout the maneuver;

(b) At an approach gradient equal to the steepest recommended for operational use; and

(c) With only those power or thrust changes that would be made when landing normally from an approach at 1.3 V_{S1}.

14. Section 23.155 is amended by revising paragraph (b) to read as follows:

§ 23.155 Elevator control forces in maneuvers.

* * * * *

(b) The requirement of paragraph (a) of this section must be met at 75 percent of maximum continuous power for reciprocating engines, or the maximum power or thrust selected by the applicant as an operating limitation for use during cruise for reciprocating or turbine engines, and with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for wings level flight at V_A; and

(2) In a turn with the trim setting used for the maximum wings level flight speed, except that the speed may not exceed V_{NE} or V_{MO}/M_{MO}, whichever is appropriate.

* * * * *

15. Section 23.157 is amended by adding the phrase "but not more than 10 seconds," after the word "seconds," and before the word "where" in paragraph (a)(2); by adding the phrase "but not more than 7 seconds," after the word "seconds," and before the word "where" in paragraph (c)(2); and by revising paragraph (b) to read as follows:

§ 23.157 Rate of roll.

* * * * *

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the takeoff position;

(2) Landing gear retracted;

(3) For a single-engine airplane, at maximum takeoff power; and for a multiengine airplane with the critical engine inoperative and the propeller in the minimum drag position, and the other engines at maximum takeoff power; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 V_{S1} or 1.1 V_{MC}, or as nearly as possible in trim for straight flight.

* * * * *

16. Section 23.175 is amended by revising paragraphs (a)(3) and (d)(3) to read as follows:

§ 23.175 Demonstration of static longitudinal stability.

* * * * *

(a) * * *

(3) All reciprocating engines operating at maximum continuous power, or turbine engines operating at the maximum power selected by the applicant as an operating limitation for use during climb; and

* * * * *

(d) * * *

(3) The airplane trimmed at a speed in compliance with § 23.161(c)(2).

* * * * *

17. Section 23.177 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 23.177 Static directional and lateral stability.

(a) * * *

(1) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 V_{S1} up to the maximum allowable speed for the condition being investigated in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a three degree angle of descent in coordinated flight. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_A, the rudder pedal force must not reverse.

(2) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for any landing gear and flap position. This must be shown with symmetrical power, up to 75 percent of maximum continuous power, at speeds above 1.2 V_{S1} in the takeoff configuration and 1.3 V_{S1} in other configurations, up to the maximum allowable speed for the configuration being investigated in the takeoff, climb, approach, and cruise configurations. For the landing configuration, the power must be up to that necessary to maintain a three degree angle of descent in coordinated flight. The angle of bank for these tests must be appropriate to the type of airplane but in no case may the constant heading sideslip angle be less than that obtainable with 10° bank, or, if less, the maximum bank angle obtainable with full rudder deflection or 150 pounds rudder force. The static lateral stability must not be negative at 1.2 V_{S1}.

(3) In straight, steady slips at 1.2 V_{S1} for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of slip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which full rudder or aileron control is used or a control force limit contained in § 23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Enough bank must accompany the sideslip to hold a constant heading. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

* * * * *

§ 23.179 [Removed]

18. Section 23.179 is removed.

19. Section 23.181 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 23.181 Dynamic stability.

* * * * *

(c) If it is determined that the function of a stability augmentation system, reference § 23.672, is needed to meet the flight characteristic requirements of this part, the primary control requirements of paragraphs (a)(2) and (b)(2) of this section are not applicable to the tests needed to verify the acceptability of that system.

(d) During the conditions as specified in § 23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path, phugoid oscillation, that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

20. Section 23.201 is amended by revising paragraphs (c), (d)(2) (f)(4), and (f)(5) to read as follows:

§ 23.201 Wings level stall.

* * * * *

(c) The wings level stall characteristics must be demonstrated in flight as follows: Starting from a speed above the stall warning speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by an uncontrollable downward pitching motion of the airplane, until the control reaches the stop or until the activation of an artificial stall barrier, for example, stick pusher. Normal use of the elevator control for recovery is allowed after the pitching motion has unmistakably developed or after the control has been against the stop for not less than two seconds. In addition, engine power may not be increased for recovery until the speed has increased to approximately 1.2 V_{S1}.

(d) * * *

(2) If power is required during stall recovery, the power used must be that used under the normal operating procedures selected by the applicant for this maneuver; however, the power used to regain level flight may not be increased until the speed has increased to approximately 1.2 V_{S1}.

* * * * *

(f) * * *

(4) *Power:* Power off, and 75 percent maximum continuous power. If the power-to-weight ratio at 75 percent continuous power provides undesirable stall characteristics at extremely nose-high attitudes, the test may be accomplished with the power or thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less than 50 percent of maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

* * * * *

21. Section 23.203 is amended by revising paragraph (b) introductory text, (b)(4), (b)(5), (c)(1), (c)(4), and (c)(5) to read as follows:

§ 23.203 Turning flight and accelerated stalls.

* * * * *

(b) When the stall has fully developed or the elevator has reached its stop, it must be possible to regain wings level flight by normal use of the flight controls but without increasing power, and without—

* * * * *

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls, and without exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated stalls; and

(5) Exceeding the maximum permissible speed or allowable load factor.

(c) * * *

(1) *Wing Flaps:* Retracted, fully extended, and in each intermediate position, as appropriate.

* * * * *

(4) *Power:* Power or thrust off, and 75 percent maximum continuous power or thrust. If the power-to-weight ratio at 75 percent continuous power or thrust provides undesirable stall characteristics at extremely nose-high attitudes, the test may be accomplished with the power or thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less than 50 percent of maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

22. Section 23.205 is amended by revising paragraphs (b)(1) and (b)(6) to read as follows:

§ 23.205 Critical-engine-inoperative stalls.

* * * * *

(b) * * *

(1) *Wing flaps:* Retracted and set to the position used to show compliance with § 23.67.

* * * * *

(6) *Trim:* Level flight, critical engine inoperative, except that for an airplane of 6,000 pounds or less maximum weight that has a stalling speed of 61 knots or less and cannot maintain level flight with the critical engine inoperative, the airplane must be trimmed for straight flight, critical engine inoperative, at a speed as near 1.5 V_{S1} as practicable.

23. Section 23.207 is amended by revising paragraph (c) and by adding a new paragraph (d) to read as follows:

§ 23.207 Stall Warning.

* * * * *

(c) For the stall tests required by § 23.201(c), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots, but not more than the greater of 10 knots or 15 percent of the stalling speed, and must continue until the stall occurs.

(d) For all other stall tests, the stall warning must begin at not less than 5 knots above the stall speed and be sufficiently in advance of the stall for the stall to be averted by action after the stall warning first occurs. In addition, when following the procedures of § 23.1585, the stall warning must not operate during a normal takeoff, a takeoff continued with one engine inoperative or approach to landing.

24. Section 23.233 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d) to read as follows:

§ 23.233 Directional stability and control.

(a) A 90 degree cross-component of wind velocity, demonstrated to be safe for taxiing, takeoff and landing must be established and must not be less than 0.2 V_{SO}.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine power to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

* * * * *

(d) Seaplanes must demonstrate satisfactory directional stability and control for water operations up to the maximum wind velocity specified in paragraph (a) of this section.

25. Section 23.235 is revised to read as follows:

§ 23.235 Taxiing, takeoff, and landing condition.

(a) The airplane must be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may be reasonably expected in normal operation, and when takeoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation.

(b) A wave height, demonstrated to be safe for operation, and any necessary water handling procedures for seaplanes and amphibians, must be established.

26. Section 23.251 is revised to read as follows:

§ 23.251 Vibration and buffeting.

There must be no vibration or buffeting severe enough to result in structural damage, and each part of the airplane must be free from excessive vibration, under any appropriate speed and power conditions up to V_D/M_D. In addition, there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

27. Section 23.253 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 23.253 High speed characteristics.

* * * * *

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradients in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in § 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without—

* * * * *

28. Section 23.305 is amended by revising paragraph (b) to read as follows:

§ 23.305 Strength and deformation.

* * * * *

(b) The structure must be able to support ultimate loads without failure for at least three seconds, except local failures or structural instabilities between limit and ultimate load are acceptable only if the structure can sustain the required ultimate load for at least three seconds. However when proof of strength is shown by dynamic tests simulating actual load conditions, the three second limit does not apply.

29. Section 23.321 is amended by adding a new paragraph (c) to read as follows:

§ 23.321 General.

* * * * *

(c) When significant, the effects of compressibility must be taken into account.

30. Section 23.361 is amended by revising the introductory text of paragraph (a), paragraph (a)(2), and the introductory text of paragraph (c) to read as follows:

§ 23.361 Engine torque.

(a) Each engine mount and its supporting structure must be designed for the effects of—

* * * * *

(2) A limit engine torque corresponding to maximum continuous power and propeller speed acting simultaneously with the limit loads from flight condition A of § 23.333(d); and

* * * * *

(c) The limit engine torque to be considered under paragraph (a) of this section must be obtained by multiplying the mean torque by a factor of—

* * * * *

31. Section 23.369 is amended by revising the heading to read as follows:

§ 23.369 Rear lift truss.

* * * * *

32. Section 23.371 is amended by revising the heading and the introductory text of this section to read as follows:

§ 23.371 Gyroscopic and aerodynamic loads.

For turbine-powered airplanes, each engine mount and its supporting structure must be designed for the combined gyroscopic and aerodynamic loads that result, with the engines at maximum continuous r.p.m., under either of the following conditions:

* * * * *

§ 23.397 [Amended]

33. Section 23.397(b) is amended by removing the words "130 pounds" in the last line of the table and inserting the words "150 pounds" in its place.

34. Section 23.415 is amended by adding a new paragraph (c) to read as follows:

§ 23.415 Ground gust conditions.

* * * * *

(c) The tie-down attachment fittings and the surrounding structure must be designed for limit load conditions resulting from wind speeds up to 65 knots horizontally from any direction for the weight determined to be critical for tie-down.

35. Section 23.473 is amended by revising paragraph (f) to read as follows:

§ 23.473 Ground load conditions and assumptions.

* * * * *

(f) Energy absorption tests (to determine the limit load factor corresponding to the required limit descent velocities) must be made under § 23.723(a) unless specifically exempted by that section.

* * * * *

36. Section 23.479 is amended by revising paragraphs (b) and (c) to read as follows:

§ 23.479 Level landing conditions.

* * * * *

(b) When investigating landing conditions, the drag components simulating the forces required to accelerate the tires and wheels up to the landing speed (spin-up) must be properly combined with the corresponding instantaneous vertical ground reactions, and the forward-acting horizontal loads resulting from rapid reduction of the spin-up drag loads (spring-back) must be combined with vertical ground reactions at the instant of the peak forward load, assuming wing lift and a tire-sliding coefficient of friction of 0.8. However, the drag loads may not be less than 25 percent of the maximum vertical ground reactions (neglecting wing lift).

(c) In the absence of specific tests or a more rational analysis for determining the wheel spin-up and spring-back loads for landing conditions, the method set forth in appendix D of this part must be used. If appendix D of this part is used, the drag components used for design must not be less than those given by appendix C of this part.

* * * * *

37. Section 23.485 is amended by adding a new paragraph (d) to read as follows:

§ 23.485 Side load conditions.

* * * * *

(d) The side loads prescribed in paragraph (c) of this section are assumed to be applied at the ground contact point and the drag loads may be assumed to be zero.

38. Section 23.521 is amended by revising paragraphs (b) and (c) to read as follows:

§ 23.521 Water load conditions.

* * * * *

(b) Unless the applicant makes a rational analysis of the water loads, §§ 23.523 through 23.537 apply.

(c) Floats previously approved by the FAA may be installed on airplanes that are certificated under this part, provided that the floats meet the criteria of paragraph (a) of this section.

39. A new § 23.523 is added under the heading "Water Loads" to read as follows:

§ 23.523 Design weights and center of gravity positions.

(a) *Design weights.* The water load requirements must be met at each operating weight up to the design landing weight except that, for the takeoff condition prescribed in § 23.531, the design water takeoff weight (the maximum weight for water taxi and takeoff run) must be used.

(b) *Center of gravity positions.* The critical centers of gravity within the limits for which certification is requested must be considered to reach

maximum design loads for each part of the seaplane structure.

40. A new § 23.525 is added under the heading "Water Loads" to read as follows:

§ 23.525 Application of loads.

(a) Unless otherwise prescribed, the seaplane as a whole is assumed to be subjected to the loads corresponding to the load factors specified in § 23.527.

(b) In applying the loads resulting from the load factors prescribed in § 23.527, the loads may be distributed over the hull or main float bottom (in order to avoid excessive local shear loads and bending moments at the location of water load application) using pressures not less than those prescribed in § 23.533(b).

(c) For twin float seaplanes, each float must be treated as an equivalent hull on a fictitious seaplane with a weight equal to one-half the weight of the twin float seaplane.

(d) Except in the takeoff condition of § 23.531, the aerodynamic lift on the seaplane during the impact is assumed to be ⅔ of the weight of the seaplane.

41. A new § 23.527 is added under the heading "Water Loads" to read as follows:

§ 23.527 Hull and main float load factors.

(a) Water reaction load factors n_w must be computed in the following manner:

(1) For the step landing case

$$n_w = \frac{C_1 V_{SO}^2}{(\mathrm{Tan}^{2/3}\beta)\, W^{1/3}}$$

(2) For the bow and stern landing cases

$$n_w = \frac{C_1 V_{SO}^2}{(\mathrm{Tan}^{2/3}\beta)\, W^{1/3}} \times \frac{K_1}{(1+r_x^2)^{2/3}}$$

(b) The following values are used:

(1) n_w=water reaction load factor (that is, the water reaction divided by seaplane weight).

(2) C_1=empirical seaplane operations factor equal to 0.012 (except that this factor may not be less than that necessary to obtain the minimum value of step load factor of 2.33).

(3) V_{SO}=seaplane stalling speed in knots with flaps extended in the appropriate landing position and with no slipstream effect.

(4) 9β=Angle of dead rise at the longitudinal station at which the load factor is being determined in accordance with figure 1 of appendix H of this part.

(5) W=seaplane landing weight in pounds.

(6) K_1=empirical hull station weighting factor, in accordance with figure 2 of appendix H of this part.

(7) r_x=ratio of distance, measured parallel to hull reference axis, from the center of gravity of the seaplane to the hull longitudinal station at which the load factor is being computed to the radius of gyration in pitch of the seaplane, the hull reference axis being a straight line, in the plane of symmetry, tangential to the keel at the main step.

(c) For a twin float seaplane, because of the effect of flexibility of the attachment of the floats to the seaplane, the factor K_1 may be reduced at the bow and stern to 0.8 of the value shown in figure 2 of appendix H of this part. This reduction applies only to the design of the carrythrough and seaplane structure.

42. A new § 23.529 is added under the heading "Water Loads" to read as follows:

§ 23.529 Hull and main float landing conditions.

(a) *Symmetrical step, bow, and stern landing.* For symmetrical step, bow, and stern landings, the limit water reaction load factors are those computed under § 23.527. In addition—

(1) For symmetrical step landings, the resultant water load must be applied at the keel, through the center of gravity, and must be directed perpendicularly to the keel line;

(2) For symmetrical bow landings, the resultant water load must be applied at the keel, one-fifth of the longitudinal distance from the bow to the step, and must be directed perpendicularly to the keel line; and

(3) For symmetrical stern landings, the resultant water load must be applied at the keel, at a point 85 percent of the longitudinal distance from the step to the stern post, and must be directed perpendicularly to the keel line.

(b) *Unsymmetrical landing for hull and single float seaplanes.* Unsymmetrical step, bow, and stern landing conditions must be investigated. In addition—

(1) The loading for each condition consists of an upward component and a side component equal, respectively, to 0.75 and 0.25 tan β times the resultant load in the corresponding symmetrical landing condition; and

(2) The point of application and direction of the upward component of the load is the same as that in the symmetrical condition, and the point of application of the side component is at the same longitudinal station as the upward component but is directed inward perpendicularly to the plane of symmetry at a point midway between the keel and chine lines.

(c) *Unsymmetrical landing; twin float seaplanes.* The unsymmetrical loading consists of an upward load at the step of each float of 0.75 and a side load of 0.25 tan β at one float times the step landing load reached under § 23.527. The side load is directed inboard, perpendicularly to the plane of symmetry midway between the keel and chine lines of the float, at the same longitudinal station as the upward load.

43. A new § 23.531 is added under the heading "Water Loads" to read as follows:

§ 23.531 Hull and main float takeoff condition.

For the wing and its attachment to the hull or main float—

(a) The aerodynamic wing lift is assumed to be zero; and

(b) A downward inertia load, corresponding to a load factor computed from the following formula, must be applied:

$$n = \frac{C_{TO} V_{S1}^2}{(\mathrm{Tan}^{2/3}\beta) W^{1/3}}$$

Where—

n=inertia load factor;

C_{TO}=empirical seaplane operations factor equal to 0.004;

V_{S1}=seaplane stalling speed (knots) at the design takeoff weight with the flaps extended in the appropriate takeoff position;

β=angle of dead rise at the main step (degrees); and

W=design water takeoff weight in pounds.

44. A new § 23.533 is added under the heading "Water Loads" to read as follows:

§ 23.533 Hull and main float bottom pressures.

(a) *General.* The hull and main float structure, including frames and bulkheads, stringers, and bottom plating, must be designed under this section.

(b) *Local pressures.* For the design of the bottom plating and stringers and their attachments to the supporting structure, the following pressure distributions must be applied:

(1) For an unflared bottom, the pressure at the chine is 0.75 times the pressure at the keel, and the pressures between the keel and chine vary linearly, in accordance with figure 3 of appendix H of this part. The pressure at the keel (p.s.i.) is computed as follows:

$$P_K = \frac{C_2 K_2 V_{S1}^2}{\mathrm{Tan}\,\beta_k}$$

where—
P_K=pressure (p.s.i.) at the keel;
C_2=0.00213;
K_2=hull station weighing factor, in accordance with figure 2 of appendix H of this part;
V_{S1}=seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and
β_K=angle of dead rise at keel, in accordance with figure 1 of appendix H of this part.

(2) For a flared bottom, the pressure at the beginning of the flare is the same as that for an unflared bottom, and the pressure between the chine and the beginning of the flare varies linearly, in accordance with figure 3 of appendix H of this part. The pressure distribution is the same as that prescribed in paragraph (b)(1) of this section for an unflared bottom except that the pressure at the chine is computed as follows:

$$P_{ch} = \frac{C_3 K_2 V_{S1}^2}{\text{Tan}\,\beta}$$

where—
P_{ch}=pressure (p.s.i.) at the chine;
C_3=0.0016;
K_2=hull station weighing factor, in accordance with figure 2 of appendix H of this part;
V_{S1}=seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and
β=angle of dead rise at appropriate station.

The area over which these pressures are applied must simulate pressures occurring during high localized impacts on the hull or float, but need not extend over an area that would induce critical stresses in the frames or in the overall structure.

(c) *Distributed pressures.* For the design of the frames, keel, and chine structure, the following pressure distributions apply:

(1) Symmetrical pressures are computed as follows:

$$P = \frac{C_4 K_2 V_{SO}^2}{\text{Tan}\,\beta}$$

where—
P=pressure (p.s.i.);
C_4=0.078 C_1 (with C_1 computed under § 23.527);
K_2=hull station weighing factor, determined in accordance with figure 2 of appendix H of this part;
V_{SO}=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and
β=angle of dead rise at appropriate station.

(2) The unsymmetrical pressure distribution consists of the pressures prescribed in paragraph (c)(1) of this section on one side of the hull or main float centerline and one-half of that pressure on the other side of the hull or main float centerline, in accordance with figure 3 of appendix H of this part.

(3) These pressures are uniform and must be applied simultaneously over the entire hull or main float bottom. The loads obtained must be carried into the sidewall structure of the hull proper, but need not be transmitted in a fore and aft direction as shear and bending loads.

45. A new § 23.535 is added under the heading "Water Loads" to read as follows:

§ 23.535 Auxiliary float loads.

(a) *General.* Auxiliary floats and their attachments and supporting structures must be designed for the conditions prescribed in this section. In the cases specified in paragraphs (b) through (e) of this section, the prescribed water loads may be distributed over the float bottom to avoid excessive local loads, using bottom pressures not less than those prescribed in paragraph (g) of this section.

(b) *Step loading.* The resultant water load must be applied in the plane of symmetry of the float at a point three-fourths of the distance from the bow to the step and must be perpendicular to the keel. The resultant limit load is computed as follows, except that the value of L need not exceed three times the weight of the displaced water when the float is completely submerged:

$$L = \frac{C_5 V_{SO}^2 W^{2/3}}{\text{Tan}^{2/3}\beta_s (1 + r_y^2)^{2/3}}$$

where—
L=limit load (lbs.);
C_5=0.0053;
V_{SO}=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect;
W=seaplane design landing weight in pounds;
β_s=angle of dead rise at a station ¾ of the distance from the bow to the step, but need not be less than 15 degrees; and
r_y=ratio of the lateral distance between the center of gravity and the plane of symmetry of the float to the radius of gyration in roll.

(c) *Bow loading.* The resultant limit load must be applied in the plane of symmetry of the float at a point one-fourth of the distance from the bow to the step and must be perpendicular to the tangent to the keel line at that point. The magnitude of the resultant load is that specified in paragraph (b) of this section.

(d) *Unsymmetrical step loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (a) of this section and a side component equal to 3.25 tan β times the load specified in paragraph (b) of this section. The side load must be applied perpendicularly to the plane of symmetry of the float at a point midway between the keel and the chine.

(e) *Unsymmetrical bow loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (b) of this section and a side component equal to 0.25 tan β times the load specified in paragraph (c) of this section. The side load must be applied perpendicularly to the plane of symmetry at a point midway between the keel and the chine.

(f) *Immersed float condition.* The resultant load must be applied at the centroid of the cross section of the float at a point one-third of the distance from the bow to the step. The limit load components are as follows:

$$\text{vertical} = \rho g V$$

$$\text{aft} = \frac{C_X \rho V^{2/3} (K V_{SO})^2}{2}$$

$$\text{side} = \frac{C_Y \rho V^{2/3} (K V_{SO})^2}{2}$$

where—
P=mass density of water (slugs/ft.^{3})
V=volume of float (ft.^{3});
C_X=coefficient of drag force, equal to 0.133;
C_y=coefficient of side force, equal to 0.106;
K=0.8, except that lower values may be used if it is shown that the floats are incapable of submerging at a speed of 0.8 V_{so} in normal operations;
V_{so}=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and
g=acceleration due to gravity (ft/sec^2).

(g) *Float bottom pressures.* The float bottom pressures must be established under § 23.533, except that the value of K_2 in the formulae may be taken as 1.0. The angle of dead rise to be used in determining the float bottom pressures is set forth in paragraph (b) of this section.

46. A new § 23.537 is added under the heading "Water Loads" to read as follows:

§ 23.537 Seawing loads.

Seawing design loads must be based on applicable test data.

47. Section 23.571 is amended by removing the word "either" from the introductory paragraph and replacing it with the word "one" and by adding a new paragraph (c) to read as follows:

§ 23.571 Pressurized cabin.

* * * * *

(c) The damage tolerance evaluation of § 23.573(b).

48. Section 23.572 is amended by removing the word "either" from paragraph (a) and replacing it with the word "one" and by adding a new paragraph (a)(3) to read as follows:

§ 23.572 Wing, empennage, and associated structures.

(a) * * *

(3) The damage tolerance evaluation of § 23.573(b).

* * * * *

49. Under the heading "Fatigue Evaluation," a new § 23.573 is added to read as follows:

§ 23.573 Damage tolerance and fatigue evaluation of structure.

(a) *Composite airframe structure.* Composite airframe structure must be evaluated under this paragraph instead of §§ 23.571 and 23.572. The applicant must evaluate the composite airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing (including canards, tandem wings, and winglets), empennage, their carrythrough and attaching structure, moveable control surfaces and their attaching structure fuselage, and pressure cabin using the damage-tolerance criteria prescribed in paragraphs (a)(1) through (a)(4) of this section unless shown to be impractical. If the applicant establishes that damage-tolerance criteria is impractical for a particular structure, the structure must be evaluated in accordance with paragraphs (a)(1) and (a)(6) of this section. Where bonded joints are used, the structure must also be evaluated in accordance with paragraph (a)(5) of this section. The effects of material variability and environmental conditions on the strength and durability properties of the composite materials must be accounted for in the evaluations required by this section.

(1) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with damage up to the threshold of detectability considering the inspection procedures employed.

(2) The growth rate or no-growth of damage that may occur from fatigue, corrosion, manufacturing flaws or impact damage under repeated loads expected in service, must be established by tests or analysis supported by tests.

(3) The structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of detectable damage consistent with the results of the damage tolerance evaluations. For pressurized cabins, the following loads must be withstood:

(i) Critical limit flight loads with the combined effects of normal operating pressure and expected external aerodynamic pressures.

(ii) The expected external aerodynamic pressures in 1g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without any other load.

(4) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must allow development of an inspection program suitable for application by operation and maintenance personnel.

(5) The limit load capacity of each bonded joint must be substantiated by one of the following methods:

(i) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (a)(3) of this section must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features; or

(ii) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint; or

(iii) Repeatable and reliable non-destructive inspection techniques must be established that ensure the strength of each joint.

(6) Structural components for which the damage tolerance method is shown to be impractical must be shown by component fatigue tests (or analysis supported by tests) to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be done to establish the fatigue scatter factor and the environmental effects. Damage up to the threshold of detectability and ultimate load residual strength capability must be considered in the demonstration.

(b) *Metallic airframe structure.* If the applicant elects to use § 23.571(c) or § 23.572(a)(3), then the damage tolerance evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. The determination must be by analysis supported by test evidence and, if available, service experience. Damage at multiple sites due to fatigue must be included where the design is such that this type of damage can be expected to occur. The evaluation must incorporate repeated load and static analyses supported by test evidence. The extent of damage for residual strength evaluation at any time within the operational life of the airplane must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand critical limit flight loads, considered as ultimate, with the extent of detectable damage consistent with the results of the damage tolerance evaluations. For pressurized cabins, the following load must be withstood:

(1) The normal operating differential pressure combined with the expected external aerodynamic pressures applied simultaneously with the flight loading conditions specified in this part, and

(2) The expected external aerodynamic pressures in 1g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without any other load.

(c) *Inspection.* Based on evaluations required by this section, inspections or other procedures must be established as necessary to prevent catastrophic failure and must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 23.1529.

50. Section 23.613 is amended by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

§ 23.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraph (e) of this section, compliance with this paragraph must be shown by selecting design values that ensure material strength with the following probability:

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component; 99 percent probability with 95 percent confidence.

(2) For redundant structure, in which the failure of individual elements would result in applied loads being safely distributed to other load carrying members; 90 percent probability with 95 percent confidence.

(c) The effects of temperature on allowable stresses used for design in an essential component or structure must be considered where thermal effects are significant under normal operating conditions.

(d) The design of the structure must minimize the probability of catastrophic fatigue failure, particularly at points of stress concentration.

(e) Design values greater than the guaranteed minimums required by this section may be used where only guaranteed minimum values are normally allowed if a "premium selection" of the material is made in which a specimen of each individual item is tested before use to determine that the actual strength properties of that particular item will equal or exceed those used in design.

§ 23.615 [Removed]

51. Section 23.615 is removed.

52. Section 23.621 is amended by revising paragraph (c)(1) and the introductory text of paragraph (d), and by adding a new paragraph (e) to read as follows:

§ 23.621 Casting factors.

* * * * *

(c) * * *

(1) Each critical casting must either—

(i) Have a casting factor of not less than 1.25 and receive 100 percent inspection by visual, radiographic, and either magnetic particle, penetrant or other approved equivalent non-destructive inspection method; or

(ii) Have a casting factor of not less than 2.0 and receive 100 percent visual inspection and 100 percent approved non-destructive inspection. When an approved quality control procedure is established and an acceptable statistical analysis supports reduction, non-destructive inspection may be reduced from 100 percent, and applied on a sampling basis.

* * * * *

(d) *Non-critical castings.* For each casting other than those specified in paragraph (c) or (e) of this section, the following apply:

* * * * *

(e) *Non-structural castings.* Castings used for non-structural purposes do not require evaluation, testing or close inspection.

53. Section 23.629 is amended by revising paragraph (d)(1) and by adding new paragraphs (g) and (h) to read as follows:

§ 23.629 Flutter.

* * * * *

(d) * * *

(1) V_D/M_D for the airplane is less than 260 knots (EAS) and less than Mach 0.5,

* * * * *

(g) For airplanes showing compliance with the fail-safe criteria of §§ 23.571 and 23.572, the airplane must be shown by analysis or test to be free from flutter to V_DM_D after fatigue failure, or obvious partial failure of a principle structural element.

(h) For airplanes showing compliance with the damage-tolerance criteria of § 23.573, the airplane must be shown by analysis or test to be free from flutter to V_D/M_D with the extent of damage for which residual strength is demonstrated.

54. Section 23.655 is amended by revising paragraph (a) to read as follows:

§ 23.655 Installation.

(a) Movable surfaces must be installed so that there is no interference between any surfaces, their bracing, or adjacent fixed structure, when one surface is held in its most critical clearance positions and the others are operated through their full movement.

* * * * *

55. A new § 23.672 is added to read as follows:

§ 23.672 Stability augmentation and automatic and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this part, such systems must comply with § 23.671 and the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system that could result in an unsafe condition if the pilot was not aware of the failure. Warning systems must not activate the control system.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that, after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual (AFM); and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

56. Section 23.679 is revised to read as follows:

§ 23.679 Control system locks.

If there is a device to lock the control system on the ground or water:

(a) There must be a means to—

(1) Give unmistakable warning to the pilot when lock is engaged; or

(2) Automatically disengage the device when the pilot operates the primary flight controls in a normal manner.

(b) The device must be installed to limit the operation of the airplane so that, when the device is engaged, the pilot receives unmistakable warning at the start of the takeoff.

(c) The device must have a means to preclude the possibility of it becoming inadvertently engaged in flight.

57. Section 23.729 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 23.729 Landing gear extension and retraction system.

* * * * *

(f) * * *

(1) A device that functions continuously when one or more throttles are closed beyond the power settings normally used for landing approach if the landing gear is not fully extended and locked. A throttle stop may not be used in place of an aural device. If there is a manual shutoff for the warning device prescribed in this paragraph, the warning system must be designed so that when the warning has been suspended after one or more throttles are closed, subsequent retardation of any throttle to, or beyond, the position for normal landing approach will activate the warning device.

(2) A device that functions continuously when the wing flaps are extended beyond the maximum approach flap position, using a normal landing procedure, if the landing gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (f)(1) of this section.

§ 23.731 [Amended]

58. Section 23.731 is amended by removing paragraph (a), and by redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

59. Section 23.733 is amended by revising paragraph (a) to read as follows:

§ 23.733 Tires.

(a) Each landing gear wheel must have a tire whose approved tire ratings (static and dynamic) are not exceeded—

(1) By a load on each main wheel tire) to be compared to the static rating approved for such tires) equal to the corresponding static ground reaction under the design maximum weight and critical center of gravity; and

(2) By a load on nose wheel tires (to be compared with the dynamic rating approved for such tires) equal to the reaction obtained at the nose wheel, assuming the mass of the airplane to be concentrated at the most critical center of gravity and exerting a force of 1.0 W downward and 0.31 W forward (where W is the design maximum weight), with the reactions distributed to the nose and main wheels by the principles of statics and with the drag reaction at the ground applied only at wheels with brakes.

* * * * *

60. Section 23.737 is revised to read as follows:

§ 23.737 Skis.

The maximum limit load rating for each ski must equal or exceed the maximum limit load determined under the applicable ground load requirements of this part.

61. Section 23.751 is amended by revising paragraph (a) to read as follows:

§ 23.751 Main float buoyancy.

(a) Each main float must have—

(1) A buoyancy of 80 percent in excess of the buoyancy required by that float to support its portion of the maximum weight of the seaplane or amphibian in fresh water; and

(2) Enough watertight compartments to provide reasonable assurance that the seaplane or amphibian will stay afloat without capsizing if any two compartments of any main float are flooded.

* * * * *

62. Section 23.753 is revised to read as follows:

§ 23.753 Main float design.

Each seaplane main float must meet the requirements of § 23.521.

§ 23.755 [Amended]

63. The introductory text of § 23.755(a) is amended by inserting the words "without capsizing" between the words "afloat" and "in".

64. Section 23.773 is revised to read as follows:

§ 23.773 Pilot compartment view.

(a) Each pilot compartment must be—

(1) Arranged with sufficiently extensive, clear and undistorted view to enable the pilot to safely taxi, takeoff, approach, land, and perform any maneuvers within the operating limitations of the airplane.

(2) Free from glare and reflections that could interfere with the pilot's vision. Compliance must be shown in all operations for which certification is requested; and

(3) Designed so that each pilot is protected from the elements so that moderate rain conditions do not unduly impair the pilot's view of the flight path in normal flight and while landing.

(b) Each pilot compartment must have a means to either remove or prevent the formation of fog or frost on an area of the internal portion of the windshield and side windows sufficiently large to provide the view specified in paragraph (a)(1) of this section. Compliance must be shown under all expected external and internal ambient operating conditions, unless it can be shown that the windshield and side windows can be easily cleared by the pilot without interruption of moral pilot duties.

65. Section 23.775 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 23.775 Windshields and windows.

* * * * *

(f) Unless operation is known or forecast icing conditions is prohibited by operating limitations, a means must be provided to prevent or to clear accumulations of ice from the windshield so that the pilot has adequate view for taxi, takeoff, approach, landing, and to perform any maneuvers within the operating limitations of the airplane.

(g) In the event of any probable single failure, a transparency heating system must be incapable of raising the temperature of any windshield or window to a point where there would be—

(1) Structural failure that adversely affects the integrity of the cabin; or

(2) There would be a danger of fire.

66. Section 23.851 is revised to read as follows:

§ 23.851 Fire extinguishers.

(a) There must be at least one hand fire extinguisher for use in the pilot compartment that is located within easy access of the pilot while seated.

(b) There must be at least one hand fire extinguisher located conveniently in the passenger compartment—

(1) Of each airplane accommodating more than 6 passengers; and

(2) Of each commuter category airplane.

(c) For hand fire extinguishers, the following apply:

(1) The type and quantity of each extinguishing agent used must be appropriate to the kinds of fire likely to occur where that agent is to be used.

(2) Each extinguisher for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentrations.

67. Section 23.865 is revised to read as follows:

§ 23.865 Fire protection of flight controls, engine mounts, and other flight structure.

Flight controls, engine mounts, excluding those portions that are certificated as part of the engine, and other flight structure located in the engine compartment must be constructed of fireproof material or shielded so that they are capable of withstanding the effects of a fire. Engine vibration isolators must incorporate suitable features to ensure that the engine is retained if the non-fireproof portions of the isolators deteriorate from the effects of a fire.

68. Section 23.1507 is revised to read as follows:

§ 23.1507 Operating maneuvering speed.

The maximum operating maneuvering speed, V_O, must be established as an operating limitation. V_O is a selected speed that is not greater than $V_S\sqrt{n}$ established in § 23.335(c).

69. Section 23.1521 is amended by revising paragraph (a) to read as follows:

§ 23.1521 Powerplant limitations.

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines or propellers are type certificated. In addition, other powerplant limitations used in

determining compliance with this part must be established.

* * * * *

70. A new § 23.1522 is added to read as follows:

§ 23.1522 Auxiliary power unit limitations.

If an auxiliary power unit is installed, the limitations established for the auxiliary power must be specified in the operating limitations for the airplane.

71. Section 23.1525 is revised to read as follows:

§ 23.1525 Kinds of operation.

The kinds of operation authorized (e.g. VFR, IFR, day or night) and the meteorological conditions (e.g. icing) to which the operation of the airplane is limited or from which it is prohibited, must be established appropriate to the installed equipment.

72. Section 23.1527 is revised to read as follows:

§ 23.1527 Maximum operating altitude.

(a) The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional or equipment characteristics, must be established.

(b) A maximum operating altitude limitation of not more than 25,000 feet must be established for pressurized airplanes unless compliance with § 23.775(e) is shown.

73. Section 23.1549 is amended by revising the heading, introductory text of the section, and paragraph (d) to read as follows:

§ 23.1549 Powerplant and auxiliary power unit instruments.

For each required powerplant and auxiliary power unit instrument, as appropriate to the type of instruments—

* * * * *

(d) Each engine, auxiliary power unit, or propeller range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

74. Section 23.1557 is amended by removing paragraph (f) and by revising paragraph (c) to read as follows:

§ 23.1557 Miscellaneous markings and placards.

* * * * *

(c) *Fuel, oil, and coolant filler openings.* The following apply:

(1) Fuel filter openings must be marked at or near the filler cover with—

(i) For reciprocating engine-powered airplanes—

(A) The word "Avgas"; and

(B) The minimum fuel grade.

(ii) For turbine engine-powered airplanes—

(A) The words "Jet Fuel"; and

(B) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "Oil" and the permissible oil designations, or references to the Airplane Flight Manual (AFM) for permissible oil designations.

(3) Coolant filler openings must be marked at or near the filler cover with the word "Coolant".

* * * * *

75. Section 23.1563 is amended by revising paragraph (a) to read as follows:

§ 23.1563 Airspeed placards.

* * * * *

(a) The operating maneuvering speed, V_O; and

* * * * *

76. Section 23.1581 is amended by adding a new paragraph (f) to read as follows:

§ 23.1581 General.

* * * * *

(f) *Revisions and amendments.* Each Airplane Flight Manual (AFM) must contain a means for recording the incorporation of revisions and amendments.

77. Section 23.1583 is amended by adding introductory text to the section, by revising paragraphs (a)(2) and (h), and by adding a paragraph (m) to read as follows:

§ 23.1583 Operating limitations.

Operating limitations determined during type certification must be stated, including the following:

(a) * * *

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO}, if established, and their significance.

* * * * *

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

* * * * *

(m) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential must be furnished if less than the maximum possible.

78. Section § 23.1585 is amended by revising paragraphs (a) and (c), and adding paragraph (b), to read as follows:

§ 23.1585 Operating procedures.

(a) For each airplane, information concerning normal, abnormal, and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be identified and segregated, including—

(1) The maximum demonstrated values of crosswind velocity for takeoff and landing and procedures and information pertinent to operations in crosswinds;

(2) The speeds, configurations, and procedures for making a normal takeoff and the subsequent climb;

(3) Procedure for abandoning a takeoff due to engine failure or other cause;

(4) The recommended climb speeds, and any variation with altitude;

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane;

(6) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling); and

(7) For seaplanes and amphibians, water handling procedures and the demonstrated wave height.

(b) For single-engine airplanes, the procedures, speeds, and configurations for a glide following an engine failure and subsequent forced landing.

(c) For multiengine airplanes, the information must include—

(1) Procedures and speeds for continuing a takeoff following failure of the critical engine and the conditions under which takeoff can be safely continued, or a warning against attempting to continue the takeoff;

(2) Procedures, speeds, and configurations for continuing a climb following engine failure after takeoff or en route;

(3) Procedures, speeds, and configurations for making an approach and landing with one engine inoperative;

(4) Procedures, speeds, and configurations for making a go-around with one engine inoperative and the conditions under which the go-around can safely be executed, or a warning against attempting the go-around maneuver;

(5) Procedures for restarting engines in flight, including the effects of altitude, must be set forth in the Airplane Flight Manual (AFM); and

(6) The V_{SSE} determined in § 23.149.

* * * * *

79. Section 23.1587 is amended by adding the introductory text and by revising paragraphs (a), (b), and (c) to read as follows:

§ 23.1587 Performance information.

The following information must be furnished:

(a) For normal, utility, and acrobatic category airplanes:

(1) The takeoff distance determined under § 23.51 and the kind of runway surface used in the tests.

(2) The climb gradient determined under §§ 23.65 and 23.77, with the associated airspeed, power, and the airplane configuration.

(3) The landing distance determined under § 23.75.

(4) The one engine inoperative en route climb/descent gradients determined under § 23.67 for multiengine airplanes.

(5) The calculated approximate effect on takeoff distance, landing distance, and climb performance for variations in—

(i) Altitude from sea level to 10,000 feet in a standard atmosphere and cruise configuration; and

(ii) Temperature, at those altitudes from 60°F below standard to 40°F above standard.

(b) For skiplanes, a statement of the approximate reduction in climb performance may be used instead of complete new data for the skiplane configuration if—

(1) The landing gear is fixed in both the landplane and skiplane configurations;

(2) The climb performance is not critical; and

(3) The climb reduction in the skiplane configuration does not exceed 50 feet per minute.

(c) For each airplane:

(1) Any loss of altitude more than 100 feet, or any pitch more than 30 degrees below level flight attitude, occurring during the recovery part of maneuvers prescribed in §§ 23.201(c) and 23.305, if applicable.

(2) The stalling speed, V_{SO}, at maximum weight.

(3) The stalling speed, V_{S1}, at maximum weight and with the landing gear and wing flaps retracted and the effect upon this stalling speed of angles of bank up to 60 degrees.

(4) The speed used in showing compliance with the cooling and climb requirements of §§ 23.1041 through 23.1047 if this speed is greater than the best rate of climb with one engine inoperative for multiengine airplanes and the maximum atmospheric temperature at which compliance with the cooling requirements has been shown.

* * * * *

80. Section 23.1589 is amended by revising paragraph (a) to read as follows:

§ 23.1589 Loading information.

* * * * *

(a) The weight and location of each item of equipment that can be easily removed, relocated, or replaced and that is installed when the airplane was weighed under the requirement of § 23.25.

* * * * *

81. Appendix D of part 23 is amended by revising the heading and by adding a paragraph (c) to read as follows:

Appendix D to Part 23—Wheel Spin-Up and Spring-Back Loads

* * * * *

(c) Dynamic spring-back of the landing gear and adjacent structure at the instant just after the wheels come up to speed may result in dynamic forward acting loads of considerable magnitude. This effect must be determined, in the level landing condition, by assuming that the wheel spin-up loads calculated by the methods of this appendix are reversed. Dynamic spring-back is likely to become critical for landing gear units having wheels of large mass or high landing speeds.

82. A new appendix H is added to part 23 to read as follows:

Appendix H to Part 23—Seaplane Loads

BILLING CODE 4910-13-M

Appendix H

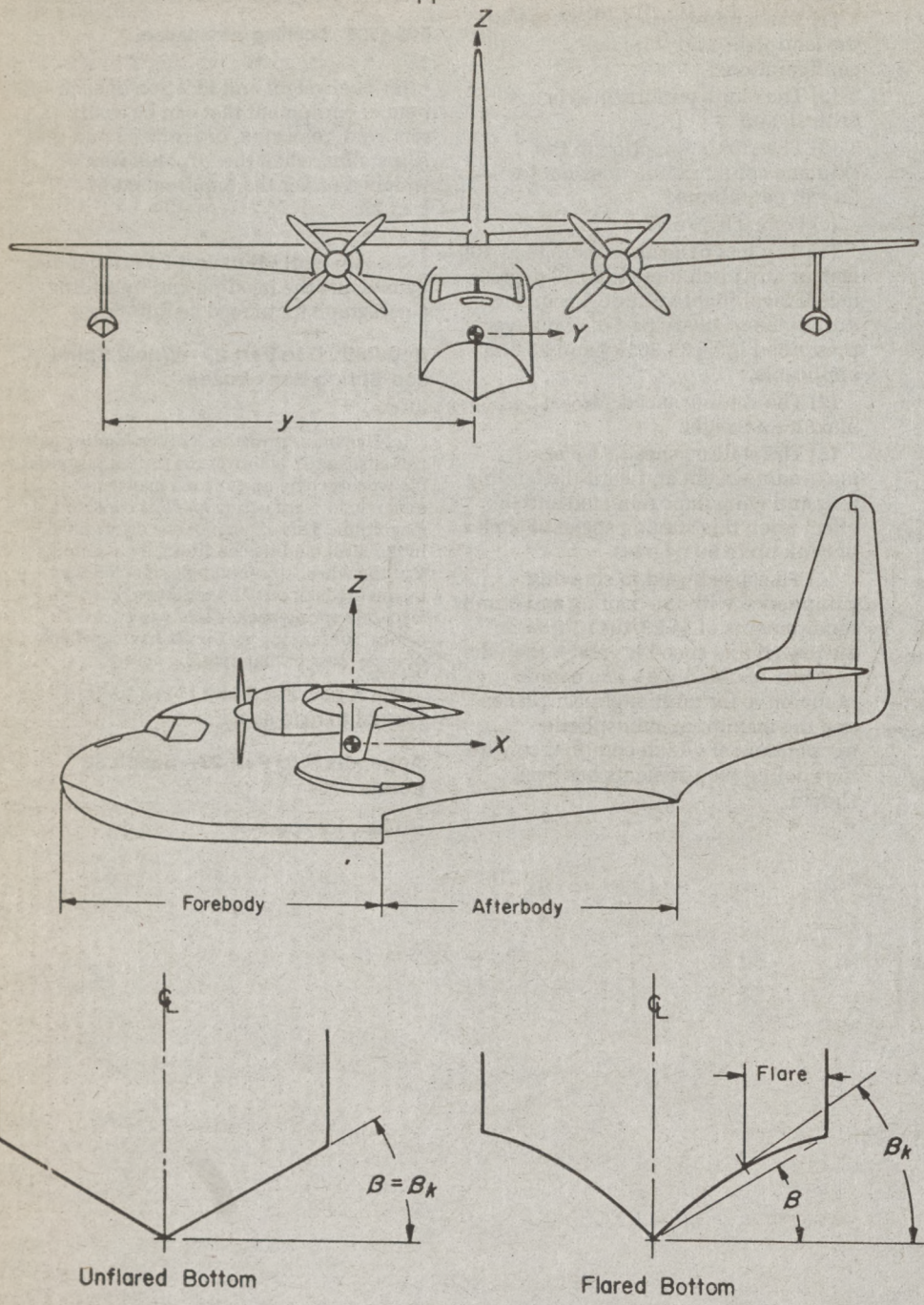
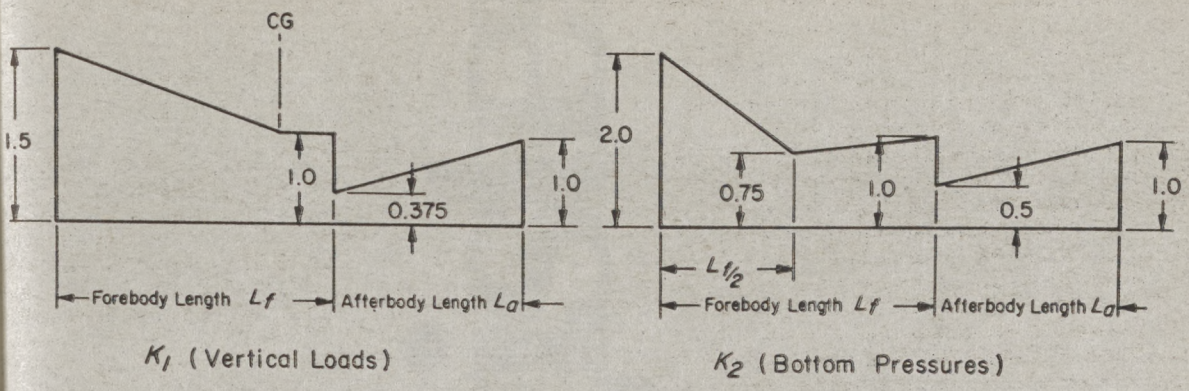


FIGURE 1. Pictorial definition of angles, dimensions, and directions on a seaplane.

Appendix H (continued)



K_1 (Vertical Loads) K_2 (Bottom Pressures)

FIGURE 2. Hull station weighing factor.

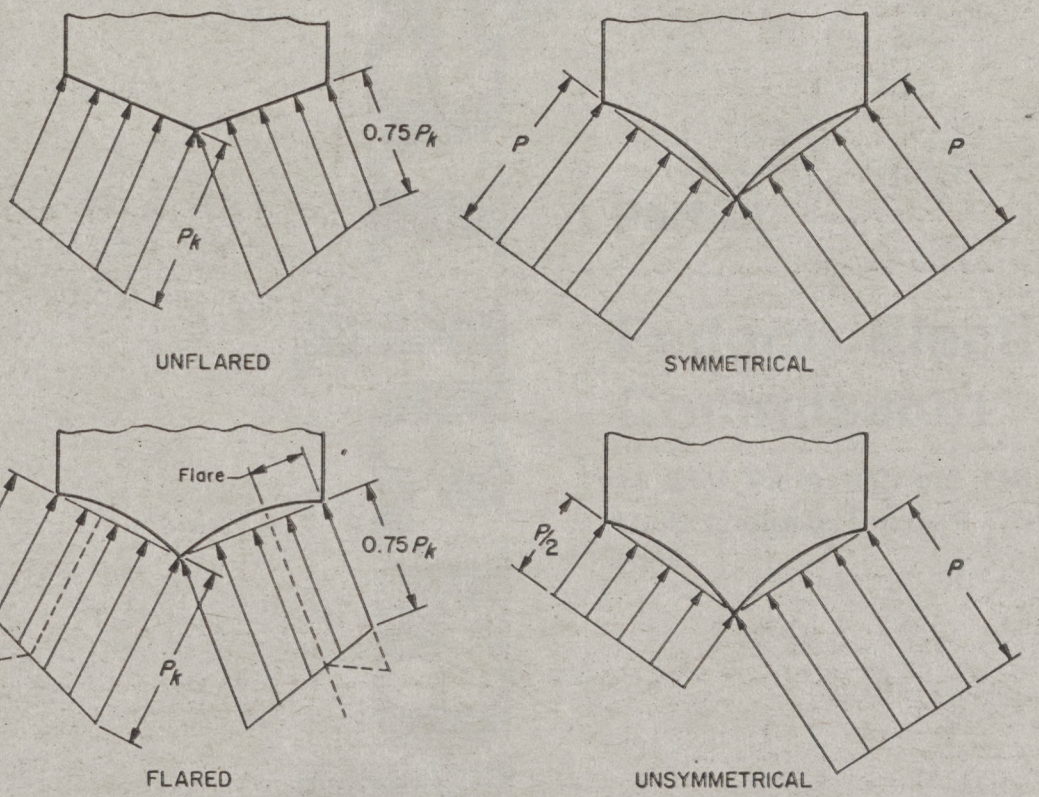


FIGURE 3. Transverse pressure distributions.

[FR Doc. 93–18569 Filed 8–5–93; 8:45 am]
BILLING CODE 4910–13–C

Federal Register

Friday
August 6, 1993

Part III

Federal Election Commission

11 CFR Parts 102 and 110
Multicandidate Political Committees; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 102 and 110

[NOTICE 1993—17]

Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission has revised its regulations regarding multicandidate political committees. The revisions require political committees to report to the Commission that they have achieved multicandidate status; provide documentation to the Commission verifying such status at the time this is first reported; and give written notice of this status to candidates and their committees that receive campaign contributions from multicandidate committees. These revisions will help the Commission carry out its statutory responsibility to maintain a current Multicandidate Committee Index, and also help candidates determine what level of contributions they can accept from donor committees.

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

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 102.2(a)(1) and (3) and 110.2(a), regarding multicandidate committees.

On March 3, 1993, the Commission issued a Notice of Proposed Rulemaking ["NPRM"] seeking comments on proposed revisions to these regulations. 58 FR 12189. Two written comments were received in response to the Notice.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 3, 1993.

Explanation and Justification

A political committee may generally contribute a maximum of $1,000 per election to a federal candidate or that candidate's authorized committee. 2 U.S.C. 441a(a)(1)(A), 11 CFR 110.1(b)(1). However, a "multicandidate political committee" may contribute a maximum of $5,000 per candidate, per election. 2 U.S.C. 441a(a)(2)(A), 11 CFR 110.2(b)(1).

A political committee qualifies as a "multicandidate political committee" if it has been registered with the Federal Election Commission for at least six months; received contributions from more than 50 persons; and, except for state party organizations, made contributions to five or more candidates for federal office. 2 U.S.C. 441a(a)(4), 11 CFR 100.5(e)(3). The Commission is required to maintain an index of committees that have qualified as multicandidate committees. 2 U.S.C. 438(a)(6)(C).

Prior to these revisions, a committee informed the Commission that it had qualified as a multicandidate committee by checking the appropriate box on the first regularly-scheduled Report of Receipts and Disbursements [FEC Form 3X] due after this status was achieved. This at times resulted in a significant lapse of time between the date on which the committee qualified and the date on which this information was made known to the Commission, and hence to the general public. For example, if a committee achieved multicandidate status shortly after filing its July 31 semi-annual report in a non-election year, the Commission's Index would not list this committee until after the committee filed the year-end report due on January 31 of the following year. 2 U.S.C. 434(a)(4), 11 CFR 104.5. A candidate or candidate's committee might find it difficult to verify the legality of a contribution over $1,000 received during this period.

Part 102—Registration, Organization, and Recordkeeping by Political Committees

Section 102.2 Statement of Organization: Forms and Committee Identification Number

New paragraph 102.2(a)(3) requires each committee to report that it has qualified as a multicandidate committee before making any contributions to candidates that exceed $1000 per election, and to submit data verifying its multicandidate status, at the time this status is reported. Both the change in status and the verifying information are to be reported on a new form: FEC Form 1M.

The NPRM proposed requiring this information to be reported as an amendment to the Statement of Organization that each committee is required to file. 2 U.S.C. 433(a), 11 CFR 102.1. Any change in information previously submitted in a Statement of Organization must be reported to the Commission no later than 10 days after the date of the change. 2 U.S.C. 433(c), 11 CFR 102.2(a)(2). (Information on multicandidate status could not be reported on an original Statement of Organization, because of the requirement that a committee be registered at least six months before it can qualify as a multicandidate committee.) The Commission has now decided on a more straightforward approach, that is requiring this information to be reported on a new, and separate, FEC Form 1M.

FEC Form 1M requires the committee, after qualifying as a multicandidate committee, to provide the Commission with: (1) The date on which it first registered with the Commission; (2) a listing of five federal candidates it has supported, with the date of the contribution to each; and (3) a certification that it has received contributions from more than 50 persons.

Formerly, this information was apparent from the committee's reports filed at the time this status was reported. Under the revised rules, however, the committee is required to provide this information at the time it files Form 1M, since the information may not have been reported by the time this form is filed.

One commenter endorsed the NPRM, but suggested the verification required in the preceding paragraph be replaced by random requests for this information from the Commission's Reports Analysis Division ["RAD"]. However, the Commission believes each committee should be required to provide this information, as proposed in the Notice.

Since the difference in maximum contributions is significant, the Commission feels strongly that each committee must demonstrate that it qualifies for this status. Moreover compliance with this requirement will not be burdensome. Committees are not required to list all of their contributors, for example, but merely to certify that they have received contributions from a sufficient number of persons. Also, the Commission's experience has been that committees may not fully understand the criteria for achieving multicandidate status, and this approach would help ensure that they comply fully. Finally, random requests for information may

not be sufficient to ensure full compliance with these requirements.

FEC Form 3X, where this information was formerly reported, has also been amended. Committees formerly checked square 3 only if they had achieved multicandidate status during the period covered by that report. They now indicate in that square if they have qualified as a multicandidate committee in every report filed after qualification, so that candidates and other interested parties may readily determine this information. The new square cross-references FEC Form 1M, which provides the more detailed information.

Part 110—Contributions and Expenditure Limitations and Prohibitions

Section 110.2 Contributions by Multicandidate Political Committees

New paragraph 110.2(a)(2) requires multicandidate committees to notify recipients of this status in writing, at the time a contribution is made. This allows a candidate or authorized committee to easily determine the legality of a committee contribution over $1,000.

The Federal Election Campaign Act prohibits both the making and the receipt of any contribution over $1,000 from a political committee that has not qualified as a multicandidate committee; and the donor is in the better position to know whether multicandidate status has been achieved. While the recipient can check the Commission's Multicandidate Committee Index, there is inevitably some time lag between the date a committee achieves multicandidate status and the date this information becomes publicly available.

The revised rule does not specify the nature of this writing. Multicandidate committees may choose to have this information printed on their checks and/or their letterhead stationery. Prior to the time this is available, they may handwrite or type this information on their checks. Alternatively, they may include this information in the body of an accompanying letter or other communication, or in another manner of their choosing.

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

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that any entities affected are already required to comply with the Act's requirements in this area.

List of Subjects

11 CFR Part 102

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

11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

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

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. In § 102.2, paragraph (a)(3) is added, to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M before it makes any contributions to candidates that exceed $1000 per election.

* * * * *

PART 110—CONTRIBUTIONS AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

4. In § 110.2, paragraph (a) is redesignated as paragraph (a)(1) and new paragraph (a)(2) is added. to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a) (1) * * *

(2) *Notice to recipients.* Each multicandidate committee that makes a contribution under this section shall notify the recipient in writing of its status as a multicandidate committee.

* * * * *

Dated: August 3, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–18862 Filed 8–5–93; 8:45 am]

BILLING CODE 6715–01–M

federal register

Friday
August 6, 1993

Part IV

Interstate Commerce Commission

Norfolk Southern Railway Company; Consolidation of Operations—CSX Transportation, Inc.; Notice

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32299]

Norfolk Southern Railway Company; Consolidation of Operations—CSX Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed July 7, 1993, by Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT) for approval and authorization of the consolidation of certain operations and joint use of certain railroad lines of NS and CSXT in South Carolina. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Commission no later than September 7, 1993, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by September 20, 1993. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by October 12, 1993.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32299, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representatives: (1) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh St. SW., Washington, DC 20590; (2) Attorney General of the United States, United States Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530; (3) Robert J. Cooney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191; (4) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, room J150, Jacksonville, FL 32202; and (5) Peter J. Shudtz, CSX Corporation, One James Center, 901 East Cary Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By application filed July 7, 1993, NS and CSXT, collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for a consolidation of certain of their operations in South Carolina. The proposal involves a series of trackage rights agreements, joint use agreements, and operating agreements under which the applicants propose to operate over certain trackage of each other.

Under the proposal, NS will grant overhead trackage rights to CSXT over its line of railroad between Columbia and Charleston, allowing CSXT to operate over this line with its own trains and its own crews. CSXT will have the right to exit the line at Pregnall and Orangeburg. In connection with these trackage rights, NS has agreed to handle cars in CSXT's accounts in trains operated by NS crews between Columbia and Charleston, including the setting out and picking up of CSXT's traffic at Pregnall and Orangeburg.

CSXT will lease NS's line of railroad between Pregnall and Giant. CSXT and NS have agreed that CSXT will switch traffic between Pregnall and Giant for all CSXT and NS customers, and traffic to or from CSXT or NS customers will remain in the respective railroad's account.

CSXT will grant overhead trackage rights to NS over its line of railroad between Columbia and Newberry, allowing NS to operate over this line with its own trains and its own crews. In connection with these trackage rights, CSXT has agreed to handle cars in NS's accounts in trains operated by CSXT crews between Columbia and Newberry. In addition, CSXT has agreed to handle cars in NS's accounts in trains operated by CSXT crews between Newberry and Spartanburg. NS and CSXT have agreed that NS will switch traffic in the Newberry area for all CSXT and NS customers. Traffic switched to and from CSXT or NS customers will remain in the respective railroad's account.

CSXT is a class I rail carrier that operates a rail system comprising approximately 19,000 miles of trackage located in 19 States, the District of Columbia, and the Province of Ontario, Canada. CSXT is a wholly owned subsidiary of CSX Corporation (CSX), a noncarrier holding company that owns and controls several carriers subject to Commission regulation, including CSXT, American Commercial Barge Line Company (an inland barge carrier), CSX Intermodal, Inc. (a motor carrier), and various other wholly owned carrier affiliates. The proposed consolidation of operations involves only CSXT's rail operations in South Carolina. The carrier operations of CSX's other Commission-regulated affiliates are not affected by the proposed transaction.

NS is a class I rail carrier that operates a rail system comprising approximately 9,000 miles of trackage located in 14 States. NS is a wholly owned subsidiary of Norfolk Southern Corporation, a noncarrier holding company. NS controls Norfolk and Western Railway Company and other carriers.

According to applicants, the proposed transaction will not substantially lessen intermodal or intramodal competition. Applicants point out that the proposed consolidation of operations relates to train operations only. They emphasize that, following the consolidation, the current customers of CSXT will continue to be CSXT customers and the current NS customers will continue to be NS customers. There will be no change in the status of those customers that are jointly served by CSXT and NS, and no prospective customers will be denied service from either CSXT or NS as a result of the consolidation. Applicants assert that the only effect the proposed consolidation will have on customer service is that CSXT cars will be handled in some instances in NS trains and by NS crews, and NS cars will be handled in other instances in CSXT trains and by CSXT crews. In short, applicants contend, there will be no lessening of competition because there will be no change in the competitive balance between NS and CSXT in South Carolina as a result of the proposed consolidation of operations.

Both CSXT and NS anticipate operating economies as a result of the proposed transaction. CSXT's traffic between Columbia and Charleston can be handled more efficiently by using NS trains between those two points. Adding the CSXT traffic to the existing NS traffic will increase the size of NS trains, provide economies of scale, and reduce the transportation costs per carload of both carriers. CSXT's use of NS trains between Columbia and Charleston will allow CSXT to eliminate two road switchers and the costs that accompany those operations. In addition, having NS switch the CSXT traffic at Newberry will allow CSXT to eliminate one road switcher at that point. By using CSXT trains to handle its traffic between Columbia and Newberry and between

Newberry and Spartanburg, and to switch its traffic between Pregnall and Giant, NS will realize certain operating efficiencies. In addition, the NS trackage between Prosperity and Alston will be surplus because NS will have trackage rights over CSXT trackage to Prosperity, and no shippers are located between Prosperity and Alston. There is no financial consideration involved in the proposed consolidation of operations other than the reimbursement by CSXT and NS for the cost of their respective use of each other's facilities in South Carolina. Applicants do not intend for the proposed consolidation of operations to result in any changes in the traffic levels of either party or any increases or decreases in revenue. Neither do they expect the proposed consolidation to involve any increase in fixed charges.

Applicants anticipate a positive impact on the adequacy of transportation service to the public. By using each other's facilities for the handling of traffic in South Carolina, NS and CSXT will both be able to streamline their respective operations and rationalize their systems. The economic gains that applicants anticipate will strengthen both NS and CSXT and allow them to provide high quality transportation service to the shippers and receivers on their respective systems.

The proposed consolidation of operations will result in the elimination of three CSXT trains. Accordingly, the train crews of CSXT who normally work on those trains will be affected by the proposed consolidation. No NS trains are to be eliminated. CSXT and NS acknowledge that, pursuant to 49 U.S.C. 11347, the Commission is required to impose labor protective provisions as a condition to its approval of the proposed consolidation of operations under 49 U.S.C. 11343. At this time, applicants have not reached agreements with the employees to be affected.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here does not involve the control or merger of two or more class I railroads. Further, the proposed transaction has no regional or national significance and does not involve a major market extension as defined under our rules for rail consolidations. NS and CSXT are not combining to enlarge their market shares between major city pairs or regions. They are individually paring down expenses to operate more efficiently in markets they are already serving. This may make the carriers more effective in meeting geographic or intermodal competition, but not to the extent that it would qualify as a major market extension. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in the proceeding by submitting written comments. Any person who submits, in timely-filed, written comments, a request to participate in this proceeding as a party of record will be accorded that status, and need not file a petition for leave to intervene.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding,

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

Decided: August 2, 1993.

By the Commission, Chairman McDonald Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19081 Filed 8–5–93; 8:45 am]

BILLING CODE 7035–01–P

federal register

Friday
August 6, 1993

Part V

The President

Executive Order 12857—Budget Control
Executive Order 12858—Deficit Reduction Fund

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

Presidential Documents

Title 3—

The President

Executive Order 12857 of August 4, 1993

Budget Control

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 1105 of title 31, United States Code, it is hereby ordered as follows:

Section 1. *Purpose.* The purpose of this order is to create a mechanism to monitor total costs of direct spending programs, and, in the event that actual or projected costs exceed targeted levels, to require that the budget address adjustments in direct spending.

Sec. 2. *Establishment of Direct Spending Targets.*

(a) *In General.* The initial direct spending targets for each of fiscal years 1994 through 1997 shall equal total outlays for all direct spending except net interest and deposit insurance as determined by the Director of the Office of Management and Budget (Director) under subsection (b).

(b) *Initial Report by Director.* (1) Not later than 30 days after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA), the Director shall submit a report to the Congress setting forth projected direct spending targets for each of fiscal years 1994 through 1997.

(2) The Director's projections shall be based on legislation enacted as of 5 days before the report is submitted under paragraph (1). To the extent feasible, the Director shall use the same economic and technical assumptions used in preparing the concurrent resolution on the budget for fiscal year 1994 (H.Con.Res. 64).

(c) *Adjustments.* Direct spending targets shall be subsequently adjusted by the Director under Section 6.

Sec. 3. *Annual Review of Direct Spending and Receipts by President.* As part of each budget submitted under section 1105(a) of title 31, United States Code, the Director shall provide an annual review of direct spending and receipts, which shall include (1) information supporting the adjustment of direct spending targets pursuant to Section 6, (2) information on total outlays for programs covered by the direct spending targets, including actual outlays for the prior fiscal year and projected outlays for the current fiscal year and the 5 succeeding fiscal years, and (3) information on the major categories of Federal receipts, including a comparison between the levels of those receipts and the levels projected as of the date of enactment of OBRA.

Sec. 4. *Special Direct Spending Message by President.* (a) *Trigger.* In the event that the information submitted under Section 3 indicates—

(1) that actual outlays for direct spending in the prior fiscal year exceeded the applicable direct spending target, or

(2) that outlays for direct spending for the current or budget year are projected to exceed the applicable direct spending targets, the Director shall include in the budget a special direct spending message meeting the requirements of subsection (b) of this Section.

(b) *Contents.* (1) The special direct spending message shall include:

(A) An explanation of any adjustments to the direct spending targets pursuant to Section 6.

(B) An analysis of the variance in direct spending over the adjusted direct spending targets.

(C) The President's recommendations for addressing the direct spending overages, if any, in the prior, current, or budget year.

(2) The recommendations may consist of any of the following:

(A) Proposed legislative changes to reduce outlays, increase revenues, or both, in order to recoup or eliminate the overage for the prior, current, and budget years in the current year, the budget year, and the 4 out-years.

(B) Proposed legislative changes to reduce outlays, increase revenues, or both, in order to recoup or eliminate part of the overage for the prior, current, and budget year in the current year, the budget year, and the 4 out-years, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, only some of the overage should be recouped or eliminated by outlay reductions or revenue increases, or both.

(C) A proposal to make no legislative changes to recoup or eliminate any overage, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, no legislative changes are warranted.

(3) Any proposed legislative change under paragraph (2) to reduce outlays may include reductions in direct spending or in the discretionary spending limits under section 601 of the Congressional Budget Act of 1974.

Sec. 5. *Proposed Special Direct Spending Resolution.* If the President recommends reductions consistent with subsection 4 (b)(2)(A) or (B), the special direct spending message shall include the text of a special direct spending resolution implementing the President's recommendations through reconciliation directives instructing the appropriate committees of the House of Representatives and Senate to determine and recommend changes in laws within their jurisdictions to reduce outlays or increase revenues by specified amounts. If the President recommends no reductions pursuant to Section 4 (b)(2)(C), the special direct spending message shall include the text of a special resolution concurring in the President's recommendation of no legislative action.

Sec 6. *Adjustments to Direct Spending Targets.*

(a) *Required Annual Adjustments.* Prior to the submission of the President's budget for each of fiscal years 1995 through 1997, the Director shall adjust the direct spending targets in accordance with this Section. Any such adjustments shall be reflected in the targets used in the report under Section 3 and message (if any) under Section 4.

(b) *Adjustment for Increases in Beneficiaries.* (1) The Director shall adjust the direct spending targets for increases (if any) in actual or projected numbers of beneficiaries under direct spending programs for which the number of beneficiaries is a variable in determining costs.

(2) The adjustment shall be made by—

(A) computing, for each program under paragraph (1), the percentage change between (i) the annual average number of beneficiaries under that program (including actual numbers of beneficiaries for the prior fiscal year and projections for the budget and subsequent fiscal years) to be used in the President's budget with which the adjustments will be submitted, and (ii) the annual average number of beneficiaries used in the adjustments made by the Director in the previous year (or, in the case of adjustments made in 1994, the annual average number of beneficiaries used in the Director's initial report under Section 2(b));

(B) applying the percentages computed under subparagraph (A) to the projected levels of outlays for each program consistent with the direct spending targets in effect immediately prior to the adjustment; and

(C) adding the results of the calculations required by subparagraph (B) to the direct spending targets in effect immediately prior to the adjustment.

(3) No adjustment shall be made for any program for a fiscal year in which the percentage increase computed under paragraph (2)(A) is less than or equal to zero.

(c) *Adjustments for Revenue Legislation.* The Director shall adjust the targets as follows:

(1) they shall be increased by the amount of any increase in receipts; or

(2) they shall be decreased by the amount of any decrease in receipts, resulting from receipts legislation enacted after the date of enactment of OBRA, except legislation enacted in response to the message transmitted under Section 4.

(d) *Adjustments To Reflect Congressional Decisions.* Upon enactment of a reconciliation bill enacted in response to a message submitted under Section 4, the Director shall adjust direct spending targets for the current year, the budget year, and each outyear through 1997 by—

(1) increasing the target for the current year and the budget year by the amount stated for that year in that reconciliation bill (but if a separate vote was required by Congressional rules, only if that vote has occurred); and

(2) decreasing the target for the current, budget, and outyears through 1997 by the amount of reductions in direct spending enacted in that reconciliation bill.

(e) *Designated Emergencies.* The Director shall adjust the targets to reflect the costs of legislation that is designated as an emergency by Congress and the President under section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Sec. 7. *Relationship to Balanced Budget and Emergency Deficit Control Act.* Recommendations pursuant to Section 4 shall include a provision specifying that reductions in outlays or increases in receipts resulting from that legislation shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

Sec. 8. *Estimating Margin.* For any fiscal year for which the overage is less than one-half of 1 percent of the direct spending target for that year, the procedures set forth in Section 4 shall not apply.

Sec. 9. *Means-Tested Programs.* In making recommendations under Section 4, the Director shall seriously consider all other alternatives before proposing reductions in means-tested programs.

Sec. 10. *Effective Date.* This order shall take effect upon enactment of OBRA. This order shall apply to direct spending targets for fiscal years 1994 through 1997 and shall expire at the end of fiscal year 1997.

William J. Clinton

THE WHITE HOUSE,
August 4, 1993.

[FR Doc. 93–19098
Filed 8–5–93; 10:15 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this Executive order, see issue 31 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Executive Order 12858 of August 4, 1993

Deficit Reduction Fund

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 1104 and 1105 of title 31, United States Code, it is hereby ordered as follows:

Section 1. *Purpose.* It is essential to guarantee that the net deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993 is dedicated exclusively to reducing the deficit.

Sec. 2. *Deficit Reduction Fund.*

(a). *Establishment of the Fund.* There is established a separate account in the Treasury, known as the Deficit Reduction Fund, which shall receive the net deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993 as called for in subsection (b) of this order.

(b) *Amounts in Fund.* Beginning upon enactment of the Omnibus Budget Reconciliation Act of 1993, the Deficit Reduction Fund shall receive any increases in total revenues resulting from enactment of such Act on a daily basis. In addition, on a daily basis, the Secretary of the Treasury shall enter into such account an amount equivalent to the net deficit reduction achieved as a result of all spending reductions resulting from such Act. The cumulative fiscal year amounts for the combination of all such revenue increases and spending reductions shall be equal to:

(1) for fiscal year 1994, $60,292,000,000;

(2) for fiscal year 1995, $70,437,000,000;

(3) for fiscal year 1996, $92,061,000,000;

(4) for fiscal year 1997, $125,881,000,000;

(5) for fiscal year 1998, $146,939,000,000.

Within 30 days of enactment of the Omnibus Budget Reconciliation Act of 1993, the foregoing amounts may be adjusted by the Director of the Office of Management and Budget to reflect the final scoring of such Act.

(c) *Status of Amounts in Fund.* (i) The amounts in the Deficit Reduction Fund shall be used exclusively to redeem maturing debt obligations of the Treasury of the United States held by foreign governments in the amounts specified in subsection (b).

(ii) The amounts in the Deficit Reduction Fund as set forth in subsection (b) that result from increases in total revenues and spending reductions shall not be available for new spending or to finance measures that increase the deficit for purposes of budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901–922).

(d) *Effect on Other Funds.* Establishment of and transfers to the Deficit Reduction Fund shall not affect trust fund transfers that may be authorized or required by provisions of the Omnibus Reconciliation Act of 1993 or any other provision of law.

Sec. 3. *Requirement for the President To Report Annually on the Status of the Fund.* The Director of the Office of Management and Budget shall include in the President's Budget transmitted under section 1105 of title 31, United States Code, information about the Deficit Reduction Fund, includ-

ing a separate statement of amounts in and Federal debt redeemed by that Fund.

Sec. 4. *Implementation.* The Secretary of the Treasury and the Director of the Office of Management and Budget shall each take such actions as may be necessary, within their respective authorities, promptly to carry out this order.

Sec. 5. *Effective Date.* This order shall take effect upon enactment of the Omnibus Budget Reconciliation Act of 1993.

William J. Clinton

THE WHITE HOUSE,
August 4, 1993.

[FR Doc. 93–19101
Filed 8–5–93; 10:30 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this Executive order, see issue 31 of the *Weekly Compilation of Presidential Documents.*

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