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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–243–AD; Amendment 39–9395; AD 95–21–09]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 series airplanes, that currently requires repetitive inspections for cracking of the No. 2 flap beams, and replacement of the flap beams, if necessary. That AD was prompted by reports of cracking of the No. 2 flap beams. This amendment provides optional modifications for extending certain inspection thresholds, and an optional terminating modification for certain inspections. This amendment also expands the applicability of the existing AD to include Model A300–600 series airplanes. The actions specified by this AD are intended to prevent asymmetry of the flaps due to cracking of the No. 2 flap beams.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 85–07–04, amendment 39–5027 (49 FR 45755, April 2, 1985), which is applicable to all Airbus Model A300 series airplanes, was published in the Federal Register on June 9, 1995 (60 FR 30471). That action proposed to continue to require repetitive inspections for cracking of the No. 2 flap beams of Model A300 series airplanes, and replacement of the flap beams, if necessary. That action also proposed to require identical inspections of Model A300–600 series airplanes. Additionally, that action proposed to provide an optional terminating modification for the repetitive inspections on the Model 300–600 series airplanes, and optional modifications for extending certain inspection thresholds for Model A300 series airplanes.

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

One commenter supports the proposed rule.

Another commenter also supports the proposed rule, but points out that paragraph (d)(3) of the proposed AD contains a typographical error. Paragraph (d)(3) should read ''perform the ultrasonic inspection required by paragraph (d) of this AD.'' Paragraph (d)(3) currently references paragraph (b). The FAA acknowledges a typographical error, and has revised paragraph (d)(3) of the final rule accordingly.

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

There are approximately 23 Model A300 series airplanes and 45 Model A300–600 series airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 85–07–04, and applicable to the Model A300 series airplanes, take approximately 6 work hours per airplane, per inspection cycle, to accomplish at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the actions required by AD 85–07–04 on U.S. operators of these airplanes is estimated to be $8,280, or $360 per airplane, per inspection cycle.

The inspections that are required by this new AD, and applicable to Model A300–600 series airplanes will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of these new requirements on U.S. operators of these airplane is estimated to be $16,200, or $360, per airplane, per inspection cycle.

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

Should an operator of a Model A300–600 series airplane elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 55 work hours to accomplish it, at an average labor ate of $60 per work hour. Based on these figures, the total cost impact of this optional terminating action would be $3,300 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5027 (49 FR 45755, April 2, 1985), and by adding a new airworthiness directive (AD), amendment 39–9395, to read as follows:

95–21–09 Airbus Industrie: Amendment 39–9395. Docket 94–NM–243–AD. Supersedes AD 85–07–04, Amendment 39–5027.

Applicability: All Model A300 and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetry of the No. 2 flaps, accomplish the following:

Note 2: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A. of AD 85–07–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 85–07–04, paragraph (a) of this AD requires that the next scheduled inspection be performed within the intervals specified in (a)(1), (a)(2), or (a)(3), as applicable, after the last inspection performed in accordance with paragraph A. of AD 85–07–04.

Note 3: Measurement of crack length is performed by measurement of the probe displacement (perpendicular to symmetry plane of beam) between defect indication appearance and its complete disappearance. The bolt hole indication should not be interpreted as an indication of a defect. These two indications appear very close together because the defects originate from the bolt holes.

(a) For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 120 days after May 9, 1985 (the effective date of AD 85–07–04, amendment 39–5027), whichever occurs later, inspect for cracking of the base steel member and light alloy side members of the No. 2 flap beams, left hand and right hand, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993.

Note 4: Inspections required by paragraph (a) of this AD that have been accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–116, Revision 1, dated August 27, 1983; Revision 2, dated April 24, 1984; Revision 3, dated July 20, 1984; Revision 4, dated August 13, 1986; or Revision 5, dated July 10, 1989; as applicable; are considered acceptable for compliance with the applicable action specified in this amendment.

(1) If no cracking is detected: Except as provided by paragraph (c) of this AD, repeat the inspection at intervals not to exceed 1,700 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any crack is detected that is less than or equal to 4 mm: Repeat the inspection at intervals not to exceed 250 landings, until the requirements of paragraph (b) of this AD are accomplished.

(3) If any crack is detected that exceeds 4 mm: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by paragraph (b) of this AD.

(b) For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap beams, in accordance with Airbus Service Bulletin No. A300–57–116, Revision 6, dated July 16, 1993. Accomplishment of this inspection terminates the inspection required by paragraph (a) of this AD.

(1) If no cracking is detected: Except as provided by paragraph (c) of this AD, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole, and that crack is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by this paragraph.

(c) For Model A300 series airplanes: After accomplishing the initial inspection required by paragraph (b) of this AD, accomplishment of either paragraph (c)(1) or (c)(2) of this AD extends the fatigue life of the No. 2 flap track beam as specified in those paragraphs, provided that no cracking is detected during any inspection required by paragraph (a) or (b) of this AD.

(1) Removal of any damage and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 4740), in accordance with Airbus Service Bulletin No. A300–57–128, Revision 3, dated January 26, 1990, extends the interval for the first repetitive inspection required by paragraph (b) of this AD from 1,700 landings to 12,000 landings, provided that Modification No. 4740 is accomplished prior to the accumulation of 16,700 total landings on the flap beams. Following accomplishment of the first repetitive inspection, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings. Or

(2) Cold working of the bolt holes and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 5815), in accordance with Airbus Service Bulletin No. A300–57–141, Revision 7, dated July 16, 1993, extends the interval for the first repetitive inspection required by paragraph (b) of this AD from 1,700 landings to the interval specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) If interference fit bolts that are 15/32-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (b) of this AD is extended to 22,000 landings, provided that Modification 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (b) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings. Or

(ii) If interference fit bolts that are 7/16- or 3/8-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (b) of this AD is extended to 33,000 landings, provided that Modification 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (b) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings.

(d) For Model A300–600 series airplanes: Prior to the accumulation of 15,000 total

landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap track beams, in accordance with Airbus Service Bulletin No. A300–57–6005, Revision 2, dated December 16, 1993.

(1) If no cracking is detected, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole and that crack is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 landings on the replaced flap beam, perform the ultrasonic inspection required by paragraph (d) of this AD.

(e) For Model A300–600 series airplanes: Installation of oversized transition fit bolts in cold-worked holes, in accordance with Airbus Service Bulletin No. A300–57–6006 (Modification 5815), Revision 4, dated July 25, 1994, constitutes terminating action for the repetitive inspection requirements of paragraph (d) of this AD, provided that no cracking is detected during any inspection required by paragraph (d) of this AD, and provided that the installation is accomplished prior to the accumulation of 15,000 total landings. If any bolt requires oversizing above 7/16-inch diameter during accomplishment of this installation, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note 5: If Airbus Service Bulletin No. A300–57–6005, Revision 2, dated December 16, 1993, is accomplished concurrently with Airbus Service Bulletin No. A300–57–6006 , Revision 3, dated December 16, 1993 (Modification 5815), the ultrasonic inspection for cracking required by paragraph (d) of this AD need not be performed since the eddy current inspection detailed for Modification 5815 is more comprehensive.

(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, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(h) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300–57–116, Revision 6, July 16, 1993	1–11	6	July 16, 1993.
A300–57–128, Revision 3, January 26, 1990	1	3	January 26, 1990.
	2–5	1	February 7, 1986.
	6–14	Original	August 27, 1983.
A300–57–141, Revision 7, July 16, 1993	1–24	7	July 16, 1993.
A300–57–6005, Revision 2, December 16, 1993	1–4	2	December 16, 1993.
	5–7, 9	1	February 26, 1993.
	8	Original	August 13, 1986.
A300–57–6006, Revision 4, July 25, 1994	1, 2, 5, 7	4	July 25, 1994.
	3, 4, 6, 8–20	3	December 16, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25029 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–174–AD; Amendment 39–9391; AD 95–21–06]

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires replacement of the fire extinguisher distribution pipe and attachments in the lower deck cargo compartment fire extinguishing system. This amendment is prompted by a report indicating that, in response to a smoke warning in the forward cargo compartment on one airplane, bottle 2 of the fire extinguishing system did not discharge extinguishing agent into the cargo compartment due to a blockage of the discharge pipe by debris within it. The actions specified in this AD are intended to ensure that, in the event of a fire, adequate fire extinguishing agent is discharged into the cargo compartment.

DATES: Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1995.

Comments for inclusion in the Rules Docket must be received on or before December 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–

174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that one operator has reported that, in response to a forward cargo compartment smoke warning, the cargo fire extinguishers were fired. Bottle #1 discharged extinguishing agent into the cargo compartment normally; however, bottle #2 did not discharge. Investigation revealed that debris from the cartridge/disc from bottle #1 had partially clogged the discharge pipe, which then prevented the extinguishing agent from being discharged from bottle #2. This condition, if not corrected, could result in an inadequate amount of fire extinguishing agent being discharged to the cargo compartment in the event of a fire.

Airbus has issued three service bulletins relevant to this problem:

1. Service Bulletin A330–26–3002, dated March 29, 1994, which is applicable to Model A330 series airplanes;

2. Service Bulletin A340–26–4007, Revision 1, dated May 16, 1994, which is applicable to Model A340 series airplanes; and

3. Service Bulletin A340–26–4007, Revision 2, dated November 22, 1994, which also is applicable to Model A340 series airplanes.

These service bulletins describe procedures for installing a modified discharge pipe between bottle #2 and the halon filter in the fire extinguishing system of the lower deck cargo compartment. The modified pipe entails two new hoses with an increased diameter and larger elbow radius, which will prevent the blockage problems caused by debris in the discharge pipe.

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directives (CN) 94–117–001(B), dated May 11, 1994, which is applicable to Model A330 series airplanes; and 94–118–007(B), dated May 11, 1994, which is applicable to Model A340 series airplanes; in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that, in the event of a fire, adequate fire extinguishing agent is discharged into the cargo compartment. This AD requires replacing the fire extinguisher distribution pipe and attachments of the extinguishing system of the lower deck cargo compartment with a modified pipe assembly. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model A330 or A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would be provided free of charge by the manufacturer. Based on these figures, the total cost impact of this AD would be $480 per airplane.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–174–AD.'' The postcard will be date stamped and returned to the commenter.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–06 Airbus: Amendment 39–9391. Docket 95–NM–174–AD.

Applicability: Model A330–301 series airplanes, and Model A340–211, –212, –311, and –312 series airplanes; on which Airbus Modification 42451 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that, in the event of a fire, adequate fire extinguishing agent is discharged into the cargo compartment, accomplish the following:

(a) Within 450 flight hours after the effective date of this AD, replace the fire extinguisher distribution pipe and attachments of the lower deck cargo compartment fire extinguishing system in accordance with Airbus Service Bulletin A330–26–3002, dated March 29, 1994 (for Model A330 series airplanes); or Airbus Service Bulletin A340–26–4007, Revision 1, dated May 16, 1994, or Revision 2, dated November 22, 1994 (applicable to Model A340 series airplanes).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The replacement shall be done in accordance with Airbus Service Bulletin A330–26–3002, dated March 29, 1994; and Airbus Service Bulletin A340–26–4007, Revision 1, dated May 16, 1994, or Airbus Service Bulletin A340–26–4007, Revision 2, dated November 22, 1994; as applicable. These service bulletins contain the following list of effective pages:

Service bulletin No. and date	Page No.	Revision level shown on page	Date shown on page
A330–26–3002, March 29, 1994	1–11	(Original)	March 29, 1994.
A340–26–4007, Revision 1, May 16, 1994	1–11	1	May 19, 1994.
A340–26–4007, Revision 2, November 22, 1994	1	2	November 22,1994.
	2–11	1	May 16, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on October 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25030 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–133–AD; Amendment 39–9394; AD 95–21–08]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, that requires modification of the engine fuel indication circuits. This amendment is prompted by numerous reports of false indications of engine fuel valve faults, which have led to the flight crew conducting rejected takeoffs (RTO). The actions specified by this AD are intended to reduce such false indications and the flight crew's consequent execution of an RTO at high speed during takeoff roll, which could result in the airplane overrunning the runway, damage to the airplane, and injury to airplane occupants.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW.,

Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1547; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing 757 series airplanes was published in the Federal Register on June 6, 1995 (60 FR 29795). That action proposed to require modifying the engine fuel indication circuits to decrease the number of false fault indications of the engine fuel valve.

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

One commenter supports the proposal.

Another commenter, the airplane manufacturer, suggests that the rule be revised to extend the compliance time for modification of the indication circuits from the proposed 6 months for airplanes equipped with Pratt & Whitney engines and 18 months for airplanes equipped with Rolls Royce engines. The commenter recommends a compliance time of 24 months for all of the affected airplanes. The FAA cannot concur with the commenter's suggestion, since the commenter provided no new data or other information to justify such an extension. The FAA finds that the compliance times, as proposed, are both reasonable and appropriate, in consideration of the fact that:

1. The modification requires only 4 work hours to complete;

2. Required parts are standard electrical components and an ample number of them are currently available;

3. The compliance time(s) permit the modification to be installed during regularly scheduled maintenance; and

4. Airplanes equipped with Rolls Royce engines require the installation of an additional modification (and, therefore, additional time is provided for the completion of that modification).

This commenter also notes that annunciation of the fuel valve position is required on transport category airplanes by section 25.1141(f)(2) of the Federal Aviation Regulations [14 CFR 21.1141(f)(2)], which states:

''(f)(2) For power-assisted valves, a means (must be provided) to indicate to the flight crew when the valve—

(i) Is in the fully open or fully closed position, or

(ii) Is moving between the fully open and fully closed position.''

The commenter states that, while the proposed modification is intended to reduce the frequency of spurious annunciations, it is merely a product improvement that simplifies the system; it was designed without full knowledge of the cause of the spurious annunciations, and it is not anticipated to have a significant effect on the rate of rejected takeoffs (RTO) for all reasons. Rather than mandate the installation of this ''minor change,'' whose effect on the rate of RTO's is not predictable, the commenter suggests that the FAA review the reasons for the existence of FAR section 25.1141(f)(2). The commenter contends that such a review is appropriate in light of (1) the existence of FAR section 25.1309(c) (''Equipment, systems, and installation''), which requires, among other things, that warning information be provided to alert the crew to unsafe system operating conditions; (2) the current flight deck ''quiet dark cockpit'' philosophy; and (3) the design dictation contained in the regulation. The FAA notes this recommendation and may consider it during the current comprehensive review of the FAA's regulation and certification capabilities (''Challenge 2000''). However, regardless of that review, the FAA has determined that the requirements of this AD are warranted to correct the unsafe condition addressed.

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

There are approximately 272 Model 757 series airplanes equipped with P&W PW2000 engines in the worldwide fleet. The FAA estimates that 219 of these airplanes are currently of U.S. registry and will be affected by this AD. It will take approximately 4 work hours per airplane to accomplish the modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the total cost impact of this AD on U.S. operators of these airplanes is estimated to be $52,560, or $240 per airplane.

There are approximately 302 Model 757 series airplanes equipped with Rolls Royce RB211–535 engines in the worldwide fleet. The FAA estimates that 119 of these airplanes are currently of U.S. registry and will be affected by this AD. It will take approximately 4 work hours per airplane to accomplish the modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts is approximately $194 per airplane. Based on these figures, the total cost impact of this modification on U.S. operators of these airplanes is estimated to be $51,646, or $434 per airplane.

Additionally, for these 119 airplanes equipped with Rolls Royce RB211–535 engines, it will take approximately 28 work hours to accomplish the modification of the engine fuel shutoff valve control, at an average labor rate of $60 per work hour. The cost of required parts is approximately $470 per airplane. Based on these figures, the total cost impact of this modification on U.S. operators of these airplanes is estimated to be $255,850, or $2,150 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–08 Boeing: Amendment 39–9394. Docket 94–NM–133–AD.

Applicability: Model 757 series airplanes equipped with Pratt & Whitney PW2000 engines, as listed in Boeing Service Bulletin 757–76–0010, dated August 12, 1993; and Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines, as listed in Boeing Service Bulletin 757–76–0011, dated December 2, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To reduce false indications of engine fuel valve faults, accomplish the following:

(a) For airplanes equipped with Pratt & Whitney PW2000 engines: Within 6 months after the effective date of this AD, modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0010, dated August 12, 1993.

(b) For airplanes equipped with Rolls-Royce RB211–535 engines: Within 18 months after the effective date of this AD, accomplish the modifications specified in paragraphs (b)(1) and (b)(2) of this AD. The modification specified in paragraph (b)(1) must be accomplished either prior to or concurrently with the modification specified in paragraph (b)(2). In any case, both modifications must be completed within 18 months after the effective date of this AD.

(1) Modify the engine fuel shutoff valve control in accordance with Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992.

Note 2: Modification of the engine fuel shutoff valve control that was accomplished prior to the effective date of this AD in accordance with either Boeing Service Bulletin 757–76–0007 (original issue), dated February 22, 1990, or Revision 1, dated October 31, 1991, is considered acceptable for compliance with paragraph (b)(1) of this AD.

(2) Modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0011, dated December 2, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) The modifications shall be done in accordance with Boeing Service Bulletin 757–76–0010, dated August 12, 1993; Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992; and Boeing Service Bulletin 757–76–0011, dated December 2, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25032 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–189–AD; Amendment 39–9400; AD 95–21–13]

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes. This action requires inspection(s) to detect damaged and missing surface protective finish, corrosion, and cracking on the servo tab brackets and the trim tab drive brackets of the aileron, and corrective actions, if necessary. This amendment is prompted by a report of corrosion on an aileron tab bracket between the two tab drive flanges in the area of the two attachment bolts, which resulted in cracking of the flanges at their base. The actions specified in this AD are intended to prevent the failure of the servo tab brackets and trim tab drive brackets of the aileron due to cracking associated with corrosion, which could result in reduced controllability of the airplane.

DATES: Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1995.

Comments for inclusion in the Rules Docket must be received on or before December 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes. The CAA advises that it has received a

report of corrosion on an aileron tab bracket between the two tab drive flanges in the area of the two attachment bolts. Such corrosion resulted in cracking of the bracket flanges at their base. The effects of such corrosion and resultant cracking could lead to the failure of the servo tab brackets and the trim tab drive brackets of the aileron. This condition, if not corrected, could result in reduced controllability of the airplane.

British Aerospace has issued Service Bulletin S.B. 57–47, dated June 15, 1995 (for Model BAe 146 series airplanes), and Service Bulletin S.B. 57–48, dated June 30, 1995 (for Model Avro 146–RJ series airplanes). These service bulletins describe procedures for detailed visual inspection(s) to detect damaged and missing surface protective finish, corrosion, and cracking on the servo tab brackets and the trim tab drive brackets of the aileron, and corrective actions, if necessary. These service bulletins also describe procedures for replacement of any cracked servo tab bracket or trim tab bracket with a new bracket. The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the failure of the servo tab brackets and the trim tab drive brackets of the aileron due to cracking associated with corrosion, which could result in reduced controllability of the airplane. This AD requires detailed visual inspection(s) to detect damaged and missing surface protective finish, corrosion, and cracking on the servo tab brackets and the trim tab drive brackets (a total of six brackets) of the aileron, and corrective actions, if necessary. This AD also requires replacement of any cracked servo tab bracket or trim tab bracket with a new bracket. The actions are required to be accomplished in accordance with the service bulletins described previously.

The FAA is considering further rulemaking action to supersede this AD to require, for certain airplanes, removal of the servo tab bracket and trim tab drive bracket of the aileron, a detailed visual inspection to detect damaged or missing surface protective finish, corrosion, or cracking, and corrective actions. However, the planned compliance time for these actions is sufficiently long so that notice and time for public comment would not be impracticable.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–189–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–13 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9400. Docket 95–NM–189–AD.

Applicability: All Model BAe 146 series airplanes; and all Model Avro 146–RJ series airplanes, all line numbers up to and

including line number E3263; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the servo and trim tab drive brackets of the aileron due to cracking associated with corrosion, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a detailed visual inspection to detect damaged or missing surface protective finish, corrosion, or cracking on the servo tab brackets and the trim tab drive brackets of the aileron (total of 6 brackets), in accordance with British Aerospace Service Bulletin S.B. 57–47, dated June 15, 1995 (for Model BAe 146 series airplanes), or British Aerospace Service Bulletin S.B. 57–48, dated June 30, 1995 (for Model Avro 146–RJ series airplanes), as applicable.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found on the surface protection finish, but no corrosion or cracking is detected on any servo tab bracket or trim tab drive bracket, prior to further flight, reapply the intermediate (barrier) coat and the strippable polyurethane gloss top coat (aluminum colored), in accordance with the applicable service bulletin.

(3) If any corrosion, but no cracking, is detected on the servo tab bracket or trim tab drive bracket, repeat the inspection thereafter at intervals not to exceed 50 landings. Prior to the accumulation of 500 landings after the initial inspection, remove corrosion and reapply the intermediate (barrier) coat and the strippable polyurethane gloss top coat (aluminum colored), in accordance with the applicable service bulletin.

(4) If any cracking is detected on the servo tab drive bracket, prior to further flight, replace the cracked bracket with a new bracket, in accordance with the applicable service bulletin. After accomplishing the replacement, no further action is required by this AD for that servo tab bracket.

(5) If any cracking is detected in only one flange of a single trim tab drive bracket and no other discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 10 landings. Prior to the accumulation of 50 landings after the initial inspection, replace the cracked trim tab drive bracket with a new bracket, in accordance with the applicable service bulletin. After accomplishing the replacement, no further action is required by this AD for that trim tab drive bracket.

(6) If any cracking is detected in the trim tab drive bracket and the crack has propagated through the flange or cracking exists in more than one flange of the bracket, prior to further flight, replace the cracked trim tab drive bracket with a new bracket, in accordance with the applicable service bulletin. After accomplishing the replacement, no further action is required by this AD for that trim tab drive bracket.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The actions shall be done in accordance with British Aerospace Service Bulletin S.B. 57–47, dated June 15, 1995, or British Aerospace Service Bulletin S.B. 57–48, dated June 30, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on October 6, 1995.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25450 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 91–CE–46–AD; Amendment 39–9401; AD 95–21–14]

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 83–18–03, which currently requires repetitively inspecting the tailplane outboard hinge assembly on certain de Havilland DHC–6 series airplanes, and replacing any cracked tailplane outboard hinge assembly. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action requires eventually modifying the tailplane outboard hinge arm and tailplane hinge plate with parts of improved design (Modification No. 6/1799) as terminating action for the currently required repetitive inspections. The actions specified by this AD are intended to prevent tailplane failure caused by cracks in either outboard hinge arm or the hinge plate, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective December 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to

certain de Havilland DHC–6 series airplanes without Modification No. 6/1799 incorporated was published in the Federal Register on October 31, 1994 (59 FR 54410). The action proposed to supersede AD 83–18–03 with a new AD that would (1) initially retain the requirement of repetitively inspecting the tailplane outboard hinge assembly for cracks, and replacing any cracked part; and (2) eventually require modifying the tailplane outboard hinge arm and tailplane hinge plate with parts of improved design (Modification No. 6/1799) as terminating action for the currently required repetitive inspections. Accomplishment of the proposed actions would be in accordance with de Havilland Service Bulletin No. 6/421, Revision B, dated November 11, 1983.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 141 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 35 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $4,400 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $916,500. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required modification.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 141 airplanes in the U.S. registry that are affected by this AD, the FAA has determined that approximately 40 percent are operated in scheduled passenger service. A significant number of the remaining 60 percent are operated in other forms of air transportation such as air cargo and air taxi.

This AD allows 2,400 hours time-in-service (TIS) after the effective date of this AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the required modification within 12 to 24 calendar months after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 12 to 24 years before the required modification is mandatory.

The following paragraphs present cost scenarios for airplanes where no cracks are found and where cracks are found during the inspections, and where the remaining airplane life is 15 years with an average annual utilization rate of 1,600 hours TIS. A copy of the full Cost Analysis and Regulatory Flexibility Determination for this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

—No Cracks Scenario: Under the provisions of AD 83–18–03, an owner/operator of a de Havilland DHC–6 series airplane in scheduled service who operates an average of 1,600 hours TIS annually will inspect every 1,200 hours TIS. This amounts to a remaining airplane life (estimated 15 years) amount of $4,769; this figure is based on the assumption that no cracks are found during the inspections. This AD requires the same 1,200-hour TIS inspection until 2,400 hours TIS after the effective date of the AD when the operator has to replace the tailplane outboard hinge arm assembly (eliminating the need for further repetitive inspections), which results in a present value cost of $6,574. The incremental cost of this AD for such an airplane is $1,805 ($6,574 − $4,769) or $1,309 annualized over the 1.5 years it will take to accumulate 2,400 hours TIS. An owner of a general aviation airplane who operates 800 hours TIS annually without finding any cracks during the 1,200-hour TIS inspections will incur a present value incremental cost of $3,483 ($5,990 − $2,507). This amounts to a per year amount of $1,327 over the three years it takes to accumulate 2,400 hours TIS.

—Cracks Found Scenario: Under the provisions of AD 83–18–03, an owner/operator of a de Havilland DHC–6 series airplane who finds cracks during an inspection will repair the crack prior to further flight and resume inspections every 1,200 hours TIS. This AD requires immediate replacement of the arm assembly if cracks are found during an inspection as terminating action for the repetitive inspection requirement. The repair cost is the same as the replacement except that the repair does not terminate the inspection requirement. For this reason, this AD results in present-day cost savings, which will continue to grow over the remaining life of the airplane since repetitive inspections are not required. Using the assumed 15-year remaining life, the cost savings for incorporating Modification 6/1799 will be $4,409 for scheduled service airplane owners/operators and $2,149 for general aviation airplane owners/operators.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules could have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they could, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 141 U.S.-registered airplanes affected by this AD, 6 airplanes are owned by the federal government. Of the other 135, one business owns 26 airplanes, one business owns 9 airplanes, one business owns 8

airplanes, one business owns 7 airplanes, one business owns 4 airplanes, two businesses own 3 airplanes each, thirteen businesses own 2 airplanes each, and forty-nine businesses each own 1 airplane.

Because the FAA has no readily available means of obtaining data on sizes of these entities, the economic analysis for this AD utilizes the worst case scenario using the lower annualized cost threshold of $5,000 for operators in unscheduled service instead of $69,000 for operators in scheduled service. With this in mind and based on the above ownership distribution, the 64 entities owning 3 or fewer airplanes will not experience a ''significant economic impact'' as defined by FAA Order 2100.14A. Since the remaining five entities do not constitute a ''substantial number'' as defined in the Order, this AD will not have a ''significant economic impact on a substantial number of small entities.''

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 83–18–03, Amendment 39–4719, and adding a new AD to read as follows:

95–21–14 de Havilland: Amendment 39–9401; Docket No. 91–CE–46–AD. Supersedes AD 83–18–03, Amendment 39–4719.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200 and DHC–300 airplanes (serial numbers 1 to 810), certificated in any category, that do not have Modification 6/1799 incorporated in accordance with the Accomplishment Instructions, *Replacement,* section of de Havilland Service Bulletin (SB) No. 6/421, Revision B, dated November 11, 1983.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent tailplane failure caused by cracks in either the outboard hinge arm or the hinge plate, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD or within the next 1,200 hours TIS after the last inspection accomplished in accordance with superseded AD 83–18–03, Amendment 39- 4719, whichever occurs later, inspect the tailplane outboard hinge arm assembly for cracks in accordance with the Accomplishment Instructions, *Inspection,* section of de Havilland SB No. 6/421, Revision B, dated November 11, 1983.

(1) If cracks are not found, reinspect every 1,200 hours TIS until Modification 6/1799 (tailplane outboard hinge arm and tailplane hinge plate) is installed as required by paragraph (b) of this AD.

(2) If cracks are found, prior to further flight, replace the tailplane outboard hinge arm assembly with Modification 6/1799 in accordance with the Accomplishment Instructions, *Replacement,* section of de Havilland SB No. 6/421, Revision B, dated November 11, 1983.

(b) Within 2,400 hours TIS after the effective date of this AD, replace the tailplane outboard hinge arm assembly with Modification 6/1799 in accordance with the Accomplishment Instructions, *Replacement,* section of de Havilland SB No. 6/421, Revision B, dated November 11, 1983, unless already accomplished in accordance with paragraph (a)(2) of this AD.

(c) Compliance with paragraph (a)(2) or (b) of this AD is considered terminating action for the inspection requirements of this AD.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) The inspections and modification required by this AD shall be done in accordance with de Havilland Service Bulletin No. 6/421, Revision B, dated November 11, 1983. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9401) supersedes AD 83–18–03, Amendment 39–4719.

(h) This amendment (39–9401) becomes effective on December 4, 1995.

Issued in Kansas City, Missouri, on October 6, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25441 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–52–AD; Amendment 39–9407; AD 95–21–20]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires a visual inspection to detect damage to the flexible fuel drain line of the auxiliary power unit (APU), and replacement of the drain line, if necessary. This amendment also requires installation of two additional clamps to secure the flexible fuel drain line to the fuel supply line of the APU. This amendment is prompted by reports of electrical arcing between the flexible fuel drain line and the APU starter motor. The actions specified by this AD are intended to prevent such electrical arcing, which could result in a fire in the APU.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on July 13, 1995 (60 FR 36078). That action proposed to require a one-time visual inspection to detect damage to the APU flexible fuel drain line and its braiding, and replacement of the drain line with a new or serviceable drain line, if necessary. That action also proposed to require the installation of two additional clamps to secure the flexible fuel drain line to the fuel supply line.

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

Both commenters support the proposed rule.

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

The FAA estimates that 63 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,285, or $195 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–20 Fokker: Amendment 39–9407. Docket 95–NM–52–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11405 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the flexible fuel drain line and starter motor positive terminal of the auxiliary power unit (APU), which could lead to a fire in the APU, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a visual inspection of the APU to detect damage of the flexible fuel drain line and its braiding, in accordance with Fokker Service Bulletin SBF100–49–023, dated November 20, 1992.

(1) If no damage is detected, prior to further flight, install two additional clamps on the fuel supply line and flexible fuel drain line, in accordance with the service bulletin.

(2) If any damage is detected, prior to further flight, replace the flexible fuel drain line with a new or serviceable drain line, and install two additional clamps on the fuel supply line and flexible fuel drain line, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspection, installations, replacement and shall be done in accordance with Fokker Service Bulletin SBF100–49–023, dated November 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 10, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25603 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–242–AD; Amendment 39–9405; AD 95–21–18]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that requires an inspection to ensure that various components of the retraction actuator of the nose landing gear (NLG) are secure, and an inspection of the bearing cap mounting holes for correct hole and thread length. This AD also requires a later inspection for certain discrepancies of the retraction actuator; installation of revised tolerance bushings; and correction of any discrepancy found. This amendment is prompted by reports of failure of the attachment bolts of the bearing cap of the retraction actuator of the NLG. The actions specified by this AD are intended to prevent the inability to raise or lower the NLG, or possible collapse of the NLG, due to failure of the attachment bolts of the bearing cap.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes was published in the Federal Register on June 12, 1995 (60 FR 30797). That action proposed to require an inspection to ensure that the bearing caps, bolts, and special washers are secure; and an inspection of the bearing cap mounting holes for correct hole and thread length. That action also proposed to require a later inspection for discrepancies of the retraction actuator; installation of revised tolerance bushings; and alignment of the outboard support bracket, if necessary. That action also proposed to require corrective actions for any discrepancy found.

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

The commenter supports the proposed rule.

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

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,200, or $1,020 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–18 Jetstream Aircraft Limited (Formerly, British Aerospace Commercial Aircraft Limited): Amendment 39–9405. Docket 94–NM–242–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2056 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to raise or lower the nose landing gear (NLG), or a possible collapse of the NLG, accomplish the following:

(a) Within 300 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first: Perform an inspection to ensure that the components of the bracket attachment assembly of the retraction actuator of the NLG are secure, and to ensure that the inboard and outboard support brackets of the mounting holes of the bearing cap have correct hole and thread lengths, in accordance with paragraph 2.A. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(b) Within 3,000 landings, or 12 months after the effective date of this AD, whichever occurs first: Install revised tolerance bushings in the bearing cap/bracket attachment assemblies of the NLG retraction actuator, test the actuator for freedom of movement, and inspect for any discrepancy of the actuator, in accordance with paragraph 2.B. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994.

(1) If no discrepancy is found no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The actions shall be done in accordance with Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 10, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25601 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–254–AD; Amendment 39–9392; AD 95–21–07]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L–1011–385 series airplanes, that requires modifications of various fluid drainage areas of the fuselage. This amendment is prompted by incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to problems associated with corrosion.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Model L–1011–385 series airplanes was published in the Federal Register on February 22, 1995 (60 FR 9796). That action proposed to require the accomplishment of modifications, installations, and other actions relative to fluid drainage areas of the fuselage.

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

One commenter supports the proposal.

One commenter requests that the proposal be revised to remove the requirement to comply with the procedures described in Lockheed Service Bulletin 093–53–095, Revision 2, dated June 22, 1987. This specific service bulletin describes procedures for installing drainage provisions at the pressure deck of the nose landing gear. The commenter states that these procedures are listed as part of Corrosion Task C–53–110–05 in the Model L–1011 Corrosion Prevention and Control Program (Lockheed Document LR 31889), and are mandated by AD 93–20–03, amendment 39–8710 (58 FR 60775, November 18, 1993). The FAA does not concur. Corrosion Task C–53–110–05 entails an inspection for corrosion of the pressure deck area above the nose landing gear compartment. An additional part of that Task is the installation of an insulation standoff modification that is described in Appendix D of Lockheed Document

LR 31889. However, the actions proposed in the notice, and described in Lockheed Service Bulletin 093–53–095, go beyond those currently mandated by AD 93–20–03. These new actions require the installation of two drain valves and the installation of additional drain holes. The FAA has determined that these actions must be accomplished in order to positively address the unsafe condition presented by the problems associated with corrosion.

This commenter also requests that the final rule be revised to allow the installation of any of the optional insulation standoffs specified in Appendix D [''Insulation Batts Standoffs (Bilges)''] of Lockheed Document LR 31889. The commenter points out that Lockheed Service Bulletin 93–53–095 specifically calls for the installation of stud-type standoffs, but Appendix D of the Lockheed Document allows the use of several options for maintaining a space between structure and insulation. This particular commenter, a U.S. operator, elected to install (previously) the ''egg crate'' option, and requests that the AD indicate that use of such an option is considered to be in compliance with the intent of the rule. The FAA concurs. A new Note 4 has been added to the final rule to specify this.

Paragraph (a)(2) of the final rule has been revised to correct a typographical error that appeared in the published version of the notice. In the notice, the compliance terminology of that paragraph was stated as, ''* * * that has exceeded the IA for that zone as December 17, 1994* * *'' However, it should have read, ''* * * as of December 17, 1994* * *'' The final rule has been corrected accordingly.

Additionally, the final rule has been revised to clarify that the issuance date of Lockheed Document LR 31889 is April 15, 1994.

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

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this proposed AD. It will take approximately 236 work hours per airplane to accomplish the required actions, including time to gain access and close up. The average labor rate is currently $60 per work hour. Based on these figures, the total cost impact of the requirements of this AD on U.S. operators is estimated to be $1,656,720, or $14,160 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–07 Lockheed: Amendment 39–9392. Docket 94–NM–254–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to the problems associated with corrosion accomplish the following:

(a) Accomplish the modifications, installations, and inspections described in the Lockheed service bulletins listed in Section 7.2 of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' Revision A, dated April 15, 1994 (hereafter referred to as ''the Document''), in accordance with the following schedule:

Note 2: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished prior to the effective date of this AD or during production are considered to be in compliance with this paragraph.

Note 3: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished previously in accordance with an earlier version of the applicable service bulletin listed in Section 7.2 of the Document, are considered to be in compliance with this paragraph.

Note 4: In lieu of the installation of insulation batts standoffs (stud-type) specified in Lockheed Service Bulletin 093–53–095, Revision 2, dated June 22, 1987, operators may install any of the optional insulation batts standoffs specified in Appendix D of the Document. Such installation is considered to be in compliance with these requirements of this AD.

Note 5: ''Airplane zones,'' ''implementation ages,'' and ''repeat intervals,'' as referred to in this paragraph, are specified in Section 4.3 of the Document.

(1) For modifications, installations, and inspections located in an airplane zone that has not yet exceeded the ''implementation age'' (IA) for that zone as of December 17, 1994 (one year after the effective date of AD 93–20–03, amendment 39–8710): Compliance is required no later than the IA plus the repeat (R) interval for the applicable zone.

(2) For modifications, installations, and inspections located in an airplane zone that

has exceeded the IA for that zone as of December 17, 1994: Compliance is required within one R interval for that zone, measured from December 17, 1994.

(3) For airplanes that are 20 years old or older as of December 17, 1994: Accomplishment of the modifications, installation, and inspections is required within one R interval for the applicable airplane zone, but not to exceed 6 years, measured from December 17, 1994, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(d) The actions shall be done in accordance with Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' Revision A, dated April 15, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
0.1–0.4, 0.6, 1.1, 1.3, 2.1, 2.2, 3.1–3.4, 4.1–4.8, 4.12, 4.14, 4.15, 4.20, 4.24, 4.28, 4.30–4.33, 4.36–4.41, 5.2, 6.1, A.1, A.2, B.3, B.5–B.13, C.2–C.10.	Original	March 15, 1991.
0.5, 1.2, 4.9–4.11, 4.13, 4.16–4.19, 4.21–4.23, 4.25–4.27, 4.29, 4.34, 4.35, 5.1, 7.1–7.4, B.2, B.4, C.1, D.1 ..	Revision A	April 15, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25028 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–30–AD; Amendment 39–9403; AD 95–21–16]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that requires an inspection to detect evidence of sealant around the lug bushing flanges of certain actuator attach pin assemblies of the main landing gear (MLG), and replacement of the pin assembly with a serviceable unit if no sealant is present. This amendment is prompted by reports of cracks emanating from corrosion pits of the lug bores on the actuator attach pin assemblies of two MLG's. The actions specified by this AD are intended to prevent failure of the actuator attach pins as a result of corrosion and subsequent cracking of the lug bores. Such failure could result in the MLG failing to extend completely or rapidly free-falling during extension and causing additional damage to the landing gear.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes was published in the Federal Register on April 27, 1995 (60 FR 20659). That action proposed to require a one-time inspection to detect evidence of sealant around the lug bushing flanges of certain actuator attach pin assemblies of the MLG and, if no sealant is present, replacement of the pin assembly.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA extend the compliance time for replacement of discrepant actuator attach pin assemblies from 6 months to at least 12 months to coincide with scheduled maintenance activities. The commenter indicates that replacement parts may not be procurable within the proposed compliance time. The commenter adds that it conducts a visual inspection of the affected area every 40 flight hours due to previous pin failures.

The FAA does not concur with the commenter's request. The FAA has confirmed that a sufficient quantity of new parts are available to support the initiation of a replacement program. Additionally, the service bulletin cited in the AD contains an option that provides for rework of discrepant pin assemblies for reuse. The FAA is unaware of a visual inspection procedure that would detect incipient pin failure. However, the FAA would consider a request for use of such a procedure as an interim measure, or for an adjustment of the compliance time,

in accordance with the provisions of paragraph (c) of this AD, provided that adequate justification is presented to support such a request.

The commenter also contends that this AD action is not warranted. The commenter indicates that it has not incurred any damage to the landing gear or aircraft of its fleet resulting from pin failures. The FAA infers from these remarks that the commenter requests the proposal be withdrawn. The FAA does not concur with the commenter's position that this AD is not warranted. Investigation of several reports of cracked lugs found on the actuator attach pin assemblies of the main landing gears installed on Model L–1011–385 series airplanes has revealed that the lugs cracked due to corrosion beneath the bushing surface on the lug bores. This corrosion may have been caused by the intrusion of moisture between the lug surface and the bushing flange. Such corrosion and cracking presents an unsafe condition in these airplanes, since it could eventually lead to failure of the attach pins. Failure of the pins could result in the main landing gear failing to extend completely, or rapidly free-falling during extension and causing additional damage to the landing gear. The FAA has determined that this unsafe condition could exist or eventually develop on Model L–1011–385 series airplanes since the actuator attach pin assemblies are similar, if not identical, on all models of this series. The FAA also has determined that an inspection of the affected area, and correction of discrepancies, must be mandated in order to ensure that the safety of this fleet is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

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

There are approximately 236 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,020, or $60 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–16 Lockheed Aeronautical Systems Company: Amendment 39–9403. Docket 95–NM–30–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the actuator attach pins as a result of corrosion and subsequent cracking of the lug bores, which could result in the main landing gear (MLG) failing to extend completely or rapidly free-falling during extension and causing additional damage to the landing gear, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect evidence of sealant around the lug bushing flanges of the actuator attach pin assembly, part number 1642699–101, of the MLG, in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

(1) If the inspection reveals that sealant is present, no further action is required by this AD.

(2) If the inspection reveals that no evidence of sealant is present, within 6 months after accomplishing the inspection, replace the actuator attach pin assembly with a serviceable unit in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

(b) As of the effective date of this AD, no actuator attach pin assembly, part number 1642699–101, shall be installed on the MLG of any airplane unless that assembly has been inspected in accordance with the requirements of paragraph (a) of this AD and evidence of sealant has been found; or unless that assembly has been reworked and reidentified with the letter ''A'' etched at the end of the serial number, in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(e) The inspection and replacement shall be done in accordance with Lockheed

Service Bulletin 093–32–256, dated November 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 10, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25599 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–181–AD; Amendment 39–9397; AD 95–21–11]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10 (military) series airplanes. This action requires inspections to detect cracking of the wing pylon aft bulkheads and upper spar webs, and replacement or repair, if necessary. This amendment is prompted by reports of fatigue cracking in the aft bulkhead and upper spar webs. The actions specified in this AD are intended to prevent failure of the wing pylon aft bulkhead due to fatigue cracking; such failure could lead to separation of the engine and pylon from the airplane.

DATES: Effective November 2, 1995.

The incorporation by reference of McDonnell Douglas ROD Sketch 95–09–14–005, dated September 14, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of November 2, 1995.

The incorporation by reference of McDonnell Douglas DC–10 Alert Service Bulletin, A54–106, Revision 2, dated November 3, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of July 3, 1995 (60 FR 28524, June 1, 1995).

Comments for inclusion in the Rules Docket must be received on or before December 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On July 24, 1992, the FAA issued AD 92–17–13, amendment 39–8342 (57 FR 36894, August 17, 1992), which is applicable to all McDonnell Douglas Model DC–10 series airplanes. That AD requires a one-time visual inspection to detect cracks of the wing pylon aft bulkheads and upper spar webs, and repair, if necessary. Additionally, it requires that operators submit a report of inspection findings to the FAA. That AD was prompted by reports of fatigue cracking that occurred in the wing pylon aft bulkheads on two airplanes. The fatigue cracking initiated at fastener holes and/or at the lower forward edge of the bulkhead flange. Such fatigue cracking, if not detected and corrected in a timely manner, could lead to failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane.

One of the intended purposes of the one-time visual inspection and submission of reports required by that AD was to allow the FAA and the manufacturer to obtain data as to the general condition of the affected fleet relative to the identified fatigue cracking. Subsequent to the issuance of that AD, the manufacturer has conducted further investigation and analysis of the fatigue cracking found in the subject areas. This effort revealed that the cracking was caused by fatigue, which was accelerated by preload conditions. The manufacturer developed inspection procedures to ensure that this fatigue cracking is identified and corrected before it reaches critical lengths.

Subsequently, on May 19, 1995, the FAA issued AD 95–11–11, amendment 39–9244 (60 FR 28524, June 1, 1995), which is applicable to certain McDonnell Douglas Model DC–10 series airplanes. A correction of the rule, AD 95–11–11 R1, amendment 39–9315, was published in the Federal Register on July 24, 1995 (60 FR 37821). That AD was issued to address the preload conditions discussed previously. That AD requires repetitive eddy current inspections to detect fatigue cracking of the pylon aft bulkhead flange, upper pylon box web, fitting radius, and adjacent tangent areas; and repair, if necessary. The initial inspection is required to be accomplished prior to the accumulation of 1,800 landings after July 3, 1995.

Since the issuance of those two AD's, the FAA has received a report indicating that fatigue cracking in the aft bulkhead on the No. 1 pylon had propagated through the upper forward flange and continued down the vertical web of the bulkhead for approximately 11 inches. In light of this report, the FAA has determined that additional measures must be taken to ensure that any fatigue cracking in the aft bulkhead is detected in a timely manner.

The FAA previously reviewed and approved McDonnell Douglas DC–10 Alert Service Bulletin, A54–106, Revision 2, dated November 3, 1994, which describes procedures for a one-time visual inspection to detect fatigue cracking of the wing pylon aft bulkhead and upper spar web, and replacement of any cracked bulkhead. This alert service bulletin also describes procedures for conducting repetitive eddy current inspections of this area (specified as ''Phase II''), and for conducting a gap inspection of certain areas and necessary shimming (referred to as ''Phase III'').

The FAA also has reviewed and approved McDonnell Douglas ROD Sketch 95–09–14–005, dated September 14, 1995, which supplements the inspection procedures described in McDonnell Douglas DC–10 Alert Service Bulletin A54–106.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas DC–10–10, –15, –30, –40, and KC–10 (military) series airplanes of the same type design, this AD is being issued to prevent separation of the engine and pylon from the airplane due to failure of the wing pylon aft bulkhead caused by fatigue cracking. This AD applies only to those airplanes on which neither the previously required eddy current inspections required by AD 95–11–11 R1 have been performed, nor the gap inspection and shimming specified in paragraph (c) of AD 95–11–11 R1 have been performed. This AD requires a one-time visual inspection to detect fatigue cracking of the wing pylon aft bulkhead and upper spar web, replacement of any cracked bulkhead, and repair of any cracked upper spar web. Additionally, this AD requires that certain portions of the visual inspection be accomplished with the aid of a borescope. These actions are required to be accomplished in accordance with the alert service bulletin and the ROD sketch described previously. Any necessary repair is required to be accomplished in accordance with a method approved by the FAA.

For airplanes on which cracking is found during the required inspections, this AD requires that operators report results of those inspection findings to the FAA.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–181–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–11 McDonnell Douglas: Amendment 39–9397. Docket 95–NM–181–AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10 (military) series airplanes; as listed in McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994; certificated in any category; on which neither of the following actions have been accomplished:

- the initial eddy current inspections [required by paragraph (a) of AD 95–11–11 R1 (amendment 39–9315)], as described in Phase II of McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994.
- the gap inspection and shimming [specified in paragraph (c) of AD 95–11–11 R1 (amendment 39–9315)], as described in Phase III of McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Compliance with AD 92–17–13, amendment 39–8342 (57 FR 36894, August 7, 1992) does not constitute compliance with this AD.

To prevent failure of the wing pylon aft bulkhead due to fatigue cracking, which could lead to separation of the engine and pylon from the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994, and McDonnell Douglas ROD Sketch 95–09–14–005, dated September 14, 1995.

(1) First, conduct a visual inspection using bright light, mirrors, and appropriate optical aids to detect cracks of the left and right wing pylon aft bulkhead and the upper spar web, in accordance with the instructions in Phase I, paragraphs D.(1), D.(2), D.(3), D.(4), and D.(5), of the alert service bulletin. The ROD sketch must be used to supplement the inspection instructions contained in the alert service bulletin. And

(2) Second, immediately subsequent to accomplishing the inspection required by paragraph (a)(1) of this AD, conduct a visual inspection, using the aid of either a flexible borescope or a rigid borescope with a 90-degree field of view, to detect cracks of the left and right wing pylon aft bulkhead in accordance with the instructions in Phase I, paragraphs D.(2) and D.(3), of the alert service bulletin. The ROD sketch must be used to supplement the inspection instructions contained in the alert service bulletin.

(b) If any cracking is detected in the wing pylon aft bulkhead during any inspection required by this AD, prior to further flight, remove and replace the cracked bulkhead in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994.

(c) If any cracking is detected in the upper spar web during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) If any cracking is detected during any inspection required by this AD, within 10 days after detection submit a report of the inspection findings to the FAA, Transport Airplane Directorate, Los Angeles ACO, Attention: Maureen Moreland (ANM–120L), 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. The report shall include the airplane serial number, a sketch or photograph of the cracking, a description of the cracking, and the number of total landings and hours time-in-service on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

(g) The actions shall be done in accordance with McDonnell Douglas ROD Sketch 95–09–14–005, dated September 14, 1995, and McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994. The incorporation by reference of McDonnell Douglas ROD Sketch 95–09–14–005, dated September 14, 1995, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas DC–10 Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of July 3, 1995 (60 FR 28524, June 1, 1995). Copies of the ROD sketch may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Customer Services Airframe, Department C1–L32 (35–35); telephone: (310) 593–8114. Copies of the alert service bulletin may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on October 4, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25158 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 85–ANE–34; Amendment 39–9385; AD 86–09–02 R2]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, that currently requires inspections to detect cracks in the combustion chambers. This amendment relaxes the current removal criteria for cracks in the combustion chamber 2–3 liner seam joint, which will allow additional revenue service for combustion chambers with certain 2–3 liner seam joint cracks beyond the limits of AD 86–09–02 R1. This amendment also includes a simplified compliance section and references the latest revision level of PW Alert Service Bulletin No. 5639. The actions specified by this AD are intended to prevent uncontained combustion chamber outer case failure due to cracking and distress of combustion chambers.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, M/S 132–30, 400 Main St, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 86–09–02 R1, Amendment 39–5372 (51 FR 28807, August 12, 1986), which is applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, was published in the Federal Register on August 1, 1989 (54 FR 31693). The action proposed to allow additional revenue service for combustion chambers with certain 2–3 liner seam joint cracks in excess of 8 inches.

Since issuing AD 86–09–02 R1, the FAA has received reports that several operators have experienced scheduling difficulties caused by immediate engine removal due to circumferential cracking in the 2–3 liner seam joint. The FAA has determined by field service experience and engine test data that the removal criteria for circumferential cracking in the 2–3 liner seam joint can be relaxed. In addition, the FAA has determined that a simplified compliance section (relative to the NPRM), and the latest revision of the associated PW Alert Service Bulletin (ASB) can now be incorporated.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the one comment received.

The commenter states unanimous support to relax the current removal criteria for cracks in the combustion chamber 2–3 liner seam joint.

Since the issuance of the NPRM, PW has introduced new low emission combustion chamber assemblies. The FAA has determined that this AD is not applicable to engines with these new low emission combustion chamber assemblies installed.

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

The FAA estimates that 7,120 engines installed on aircraft of U.S. registry will be affected by this AD, and that this revised amendment adds no additional costs.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5372 (51 FR 28807, August 12, 1986) and by adding a new airworthiness directive, Amendment 39–9385, to read as follows:

86–09–02 R2 Pratt & Whitney: Amendment 39–9385. Docket 85–ANE–34. Revises AD 86–09–02 R1, Amendment 39–5372.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines that do not have low emission combustion chamber assemblies, Part Number (P/N) 5001958–02, –022, and 5001959–02, –022 installed. These engines are installed on but not limited to Boeing 727, 737, and McDonnell Douglas DC–9 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

(a) Perform an initial borescope, visual, or radiographic inspection of the combustion chamber liners for cracking or other types of distress in accordance with the inspection procedures of paragraph 2.C.(1) and (2), and Table 1 or 1A, and the inspection techniques of paragraph B, whichever is applicable, of PW Alert Service Bulletin (ASB) No. 5639, Revision 10, dated July 7, 1995. Determine reinspection interval or engine removal requirements in accordance with paragraph 2.C.(3), (4), (5), or (6), whichever is applicable, of PW ASB No. 5639, Revision 10, dated July 7, 1995.

(b) Reinspect combustion chamber liners for cracking or other types of distress in accordance with the inspection procedures of paragraph 2.C.(3) through (7), and the inspection techniques of paragraph B, whichever is applicable, of PW ASB No. 5639, Revision 10, dated July 7, 1995, as follows:

(1) For liners initially inspected by borescope or visual means, reinspect in accordance with Table 2 of PW ASB No. 5639, Revision 10, dated July 7, 1995.

(2) For liners initially inspected by radiographic means, reinspect in accordance with Table 3 of PW ASB No. 5639, Revision 10, dated July 7, 1995.

(3) Determine reinspection interval or engine removal requirements in accordance with paragraph 2.C.(3), (4), (5), or (6) whichever is applicable, of PW ASB No. 5639, Revision 10, dated July 7, 1995.

(c) For liners removed from service in accordance with paragraphs (a) or (b) of this airworthiness directive (AD), scrap or repair in accordance with paragraph 2.D of PW ASB No. 5639, Revision 10, dated July 7, 1995.

(d) For the purpose of this AD, an engine condition monitoring (ECM) program is defined as described in Appendix A of PW ASB No. 5639, Revision 10, dated July 7, 1995, of FAA-approved equivalent. Should stable cruise data be unavailable for a period exceeding 48 hours (2 calendar days), 12 cycles in service (CIS), or 14 hours time in service (TIS), whichever occurs later; and should the combustion chambers be beyond the non-ECM inspection category hour or cycles limit, the chambers must be inspected within the next 10 CIS. In the event that stable cruise data again becomes available prior to the expiration of the 10 CIS limit, return to the ECM inspection category is permitted if the following conditions are met:

(1) The period during which stable cruise data is unavailable does not include any one period of data loss that exceeds 72 hours (3 calendar days), and;

(2) One stable cruise point is recorded for each day that stable cruise data were unavailable, and that the rate of data acquisition not exceed one data point per cycle, and;

(3) No maintenance was accomplished on the fuel flow, exhaust gas temperature (EGT), or N1/N2 rotor speed engine instrumentation, and;

(4) The stable cruise data recorded in accordance with paragraph (d)(2) of this AD shall be processed by the ECM program and evaluated by a qualified analyst to confirm that no significant parameter shifts have occurred.

(e) The radiographic inspection techniques referenced in telegraphic AD T85–17–51 R1 as an approved alternative method of compliance to that telegraphic AD is not considered an alternative method of compliance with this AD.

(f) Combustion chambers that are removed from service prematurely, inspected in accordance with this AD, and that do not require repair, may be returned to service to continue their run to the appropriate initial inspection threshold or the applicable repetitive inspection interval, whichever is greater.

(g) Magnesium zirconate heat resistant coating must be applied in accordance with the PW JT8D Restructured Engine Manual, Part Number 481762, Chapter 72–41–14,

Repair Number 28, or FAA-approved equivalent. To meet the requirement for magnesium zirconate in a given combustion chamber category, the coating must have been completely renewed on at least the 2 through 5 liners at that repair rather than locally patched.

Note: PW All Operators Wire Number JT8D/72–41/PSE:JKS: 5–8–23–1, dated August 23, 1985, and Flight Operations Engineering Report Number RFT5–8–30–1, dated August 30, 1985, contain further information relevant to combustion chamber distress and the symptoms that manifest themselves as a result of excessive combustion chamber cracking and misalignment.

(h) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

(j) The inspection, replacement, and repair, shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
PW ASB No. 5639	1 and 2	10	July 7, 1995.
	3	1	March 21, 1986.
	4	10	July 7, 1995.
	5	2	January 16, 1987.
	6–26	10	July 7, 1995.
Appendix	27–29	10	July 7, 1995.
	30	Blank	
	31–64	10	July 7, 1995.
Total pages: 64.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, M/S 132–30, 400 Main St, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on November 17, 1995.

Issued in Burlington, Massachusetts, on September 27, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–25034 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–42–AD; Amendment 39–9404; AD 95–21–17]

Airworthiness Directives; Raytheon Corporate Jets Model Hawker 1000 and BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 1000 and BAe 125–1000A series airplanes, that requires an inspection to detect damage to an electrical cable loom (wire bundle). This amendment also requires tying back the loom with a cable tie to the cable loom support bracket, and repair, if necessary. This amendment is prompted by a report indicating that damage had occurred to the electrical cable loom. The actions specified by this AD are intended to prevent incorrect fault displays in the cockpit and possible electrical systems failures, as a result of damage to the electrical cable loom.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 and BAe 125–1000A series airplanes was published in the Federal Register on July 21, 1995 (60 FR 37607). That action proposed to require a one-time detailed visual inspection to detect chafing damage of a certain electrical cable loom located behind the right-hand throttle box cover. That action also proposed tying back the loom with a cable tie to the cable loom support bracket, if no damaged cable is found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,140, or $60 per airplane.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–17 Raytheon Corporate Jets, Inc. (Formerly de Havilland; Hawker Siddeley; British Aerospace, plc): Amendment 39–9404. Docket 95–NM–42–AD.

Applicability: Model Hawker 1000 and BAe 125–1000A series airplanes; as listed in Raytheon Service Bulletin SB 24–313, dated December 19, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect fault displays in the cockpit and possible electrical systems failures, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection to detect chafing damage of the electrical cable loom (wire bundle) behind the right-hand throttle box cover, and perform continuity and insulation checks and system functional tests, in accordance with Raytheon Service Bulletin SB 24–313, dated December 19, 1994.

(1) If no damage is found, prior to further flight, verify that the arrangement of the cable loom is correct and, using a cable tie, tie back the loom to the cable loom support bracket, in accordance with the service bulletin.

(2) If any damage is found, prior to further flight, repair the damaged loom, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The actions shall be done in accordance with Raytheon Service Bulletin SB 24–313, dated December 19, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 10, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25600 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–67–AD; Amendment 39–9406; AD 95–21–19]

Airworthiness Directives; Saab Model SAAB 340B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 340B airplanes, that requires inspections to detect cracking of the beams located over the overwing emergency exits, and replacement of the beam with a new beam, if necessary. This amendment is prompted by a report that a batch of beams with cracking may have been installed on these airplanes. The actions specified by this AD are intended to prevent cabin pressure leakage, consequent loss of cabin pressurization, and reduction of the load carrying capability of the associated structure, as a result of cracked beams.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

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

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model

SAAB 340B airplanes was published in the Federal Register on July 21, 1995 (60 FR 37608). That action proposed to require a visual and dye penetrant inspection to detect cracking of the subject beams located over the left- and right-hand overwing emergency exits. That action also proposed to require replacement of the beam with a new beam, if any cracking is detected.

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

Both commenters support the proposed rule.

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

The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,320, or $360 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–21–19 SAAB Aircraft AB: Amendment 39–9406. Docket 95–NM–67–AD.

Applicability: Model 340B airplanes having serial numbers –324 through –341 inclusive, and having serial number –347; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cabin pressure leakage and consequent reduction of the load carrying capability of the associated structure, accomplish the following:

(a) Prior to the accumulation of 4,000 flight hours after the effective date of this AD, or within 18 months of the effective date of this AD, whichever occurs first: Perform a detailed visual and dye penetrant inspection to detect cracking of the beams located over the left-hand and right-hand emergency overwing exits, in accordance with Saab Service Bulletin 340–53–047, dated December 14, 1994.

(1) If no cracking is detected, no further action is required by this AD.

(2) If any cracking is detected, prior to further flight, replace the beam with a new one, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspections and replacement shall be done in accordance with Saab Service Bulletin 340–53–047, dated December 14, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 17, 1995.

Issued in Renton, Washington, on October 10, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25602 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AGL–10]

Establishment of Class E Airspace; Pinecreek, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Piney Pinecreek Border Airport, MN, to accommodate a Nondirectional Radio Beacon (NBD) to serve Runway 15/33. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach

procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: William W. Kribble, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 21, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E5 airspace at Pinecreek, MN (60 FR 37610). The proposal was to add controlled airspace extending from 700 feet to 1200 feet for Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Piney Pinecreek Border Airport, Pinecreek, MN. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL MN E5 Pinecreek, MN [New]

(Lat. 49°59′54″ N, long. 95°58′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Piney Pinecreek Border Airport; excluding that area north of lat. 49°00′00″ N (Canadian-U.S. boundary).

* * * * *

Issued in Des Plaines, Illinois on October 3, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–25848 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASO–14]

Establishment of Class E2 Airspace; Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E2 airspace at Knoxville, TN, for Knoxville Downtown Island Airport, which has a LOC RWY 26 Standard Instrument Approach Procedure (SIAP) and a VOR/DME or GPS–B SIAP. Knoxville/McGhee-Tyson Airport Tower provides approach control service to the surface at Knoxville Downtown Island Airport. Therefore Class E2 airspace is required to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On July 25, 1995 the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E2 airspace at Knoxville, TN, (60 FR 37970). This action would provide adequate Class E2 airspace for IFR operations at the Knoxville Downtown Island Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Knoxville, TN, to accommodate current SIAPs and for IFR operations at the Knoxville Downtown Island Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ASO TN E2 Knoxville, TN [New]

Knoxville Downtown Island Airport, TN
(lat. 35°57′50″ N, long. 83°52′25″ W)

Within a 4.5-mile radius of Knoxville Downtown Island Airport, excluding that airspace within the Knoxville/McGhee-Tyson Airport, TN, Class C airspace area.

* * * * *

Issued in College Park, Georgia, on October 3, 1995.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–25850 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–6]

Modification of Class E Airspace; Mount Vernon, IL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airport designation of the Mount Vernon, Illinois, Class E2 airspace published in a final rule on August 16, 1995, Airspace Docket Number 95–AGL–6.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: William W. Kribble, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–20265, Airspace Docket 95–AGL–6, published on August 16, 1995, (60 FR 42430), modified the hours of the Mount Vernon, Illinois, Class E airspace. An error was discovered in the name of the airport. This action corrects that error by clarifying the name of the airport as Mount Vernon Airport.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Mount Vernon, Illinois, Class E airspace, as published in the Federal Register on August 16, 1995 (60 FR 42430) (Federal Register Document 95–20265; page 42430, column 3), is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

AGL IL E2 Mount Vernon, IL [Corrected]

Mount Vernon Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)
Mount Vernon-VOR/DME
(Lat. 38°21′43″ N, long. 88°48′26″ W)

Within a 4.2-mile radius of Mount Vernon Airport and within 4 miles each side of the Mount Vernon VOR/DME 044° radial extending from the 4.2-mile radius to 9.1 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on September 29, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–25849 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5316–2]

Clean Air Act (CAA) Final Full Approval Of Operating Permits Programs; State of Nebraska, City of Omaha, and Lincoln-Lancaster County Health Department (LLCHD) and Delegation of 112(l) Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the operating permits programs submitted by the state of Nebraska, city of Omaha, and LLCHD for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources. EPA is also approving, under section 112(l), all three programs for accepting delegation of section 112 standards to enforce air toxics regulations.

EFFECTIVE DATE: November 17, 1995.

ADDRESSES: Copies of the three submittals and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date (or by the end of an interim program), it must establish and implement a Federal program.

On January 31, 1995, EPA proposed full approval of the operating permits program for LLCHD (60 FR 5883–87). Furthermore, on April 3, 1995, EPA proposed approval of delegation for 112(l) for LLCHD (60 FR 16829–30). Public comments were received on (60 FR 5883–87) which are addressed in section II of this notice. None were received on 60 FR 16829–30.

On March 7, 1995, EPA proposed full approval of the operating permits program for the state of Nebraska and city of Omaha (60 FR 12521–24). The

EPA received public comments which are also addressed in section II of this notice. In this notice, EPA is taking final action to promulgate full approval of all three operating permit programs submitted within Nebraska, including delegation of 112(l) authority.

II. Public Comments

One party submitted comments on both of the two proposal notices. Although the letters are signed by different representatives, the same interest is represented by each and the comments are largely identical. A total of six comments will herein be addressed which answers all comments.

Comment #1: The approval date for all three programs should be the same, so that due dates for industry submissions triggered by the approval date will be uniform throughout the state.

EPA Response: Although two separate proposal notices were used, the EPA has combined the final action into one notice. Therefore, all three programs have the same approval date. It should be noted, however, that the effective date of the EPA approval is not necessarily the trigger date for certain source obligations under the state and local programs. For example, sources which apply for early permit processing under the state and local rules must submit complete applications by dates specified in the rules, which are not dependent on the effective date of EPA approval.

Comment #2: The annual inventory submission dates should be uniform for all three programs. The uniform date should be July 1 of each year, to correspond to the reporting deadline for toxic release inventory data under the Federal Emergency Planning and Community Right to Know Act (EPCRA).

EPA Response: Under Title V of the Act and part 70, the minimum requirements for EPA approval of state and local permitting programs contain no specific provisions governing the submission of annual emission inventory information, and no expressed or implied requirement relating to dates for submission of emission inventories. A state has the flexibility under part 70 to submit approvable programs which contain different dates for submission of emission information, at the discretion of the state.

EPA notes, in addition, that the inventory submission provisions referenced by the commenter state that annual inventories showing emissions for the prior calendar year must be submitted ''by'' July 1 (in the Nebraska rule) and ''by'' March 31 (in the Lincoln-Lancaster rule). Thus, a source owner could submit inventories by March 31 in each jurisdiction and be in compliance with both rules. Similarly, a source owner could submit toxic release information by March 31, and be in compliance with the applicable EPCRA deadline.

Comment #3: A uniform fee schedule should be established throughout the state.

EPA Response: The city of Omaha and LLCHD have established fees of $30.07 per ton of regulated air pollutant, while the state has adopted a fee slightly above this at $30.69. Under 40 CFR 70.9(a), permitting agencies must assess fees that adequately cover the costs of administering the program, and must ensure that the fees will be used solely to cover Title V permit program costs. There is no requirement that fees be uniform within a state, so long as these minimum requirements are met. In fact, since the statewide permit program in Nebraska assesses fees on fewer pollutants (i.e., Nebraska, unlike the local permitting authorities, assesses fees only on smaller particulate emissions), EPA would anticipate that the amount per ton of pollutant would be higher for the state than for the local programs. Therefore, the EPA believes, for reasons detailed in the proposed rulemakings 60 FR 5883 and 60 FR 12521, that the fee requirements of section 70.9 have been met.

Comment #4: None of Nebraska's programs allow ''off-permit'' changes without a permit revision. EPA should require that the permitting authorities adopt criteria under which permitting authorities will allow changes not covered by the permit, without the need for a permit revision.

EPA Response: In 40 CFR 70.4(b)(14), EPA recognizes that permitting authorities may, as a matter of state or local law, prohibit sources from making certain changes which are not addressed in or prohibited by a permit (''off-permit'' changes). EPA cannot require that states allow off-permit changes. Thus, this matter is within the discretion of the individual permitting agencies.

It is noted, however, that Title 129, Chapter 15:007 allows certain types of changes within a permitted facility without a permit revision (''Section 502(b)10'' changes). Interested sources should reference that provision.

Comment #5: Permitting agencies might use Title V fees to administer the Class II source program (the operating permit program for non-Title V sources). Nebraska should provide assurance that such fees will not be misdirected to non-Title V activities.

EPA Response: Fees collected under Title V may only be used for Title V activities. As stated in EPA's proposals on the state and local programs (at 60 FR 5885 and 60 FR 125223), the program submittals include a demonstration that separate funds have been created for handling the Title V fees. Permitting authorities will be expected to keep appropriate records to show that the fees are used only for activities relating to Title V.

There may be sources in the class II program, however, for which the state and local agencies may utilize Title V funding in permit processing (such as sources potentially subject to Title V, which take restrictions in Class II permits so that they will not be required to obtain Title V permits). EPA considers such permitting to be a valid Title V activity. However, the state must use other funds for permitting and other activities which have no relationship to the Title V program.

Comment #6: If more funds are generated than required, are there provisions to reduce future fee assessments?

EPA Response: In the program descriptions of all three submittals, the respective agencies identified a fee schedule that is anticipated to meet the costs of implementing the program(s). Furthermore, in each instance, the respective agencies have committed to reviewing the fee schedule on an annual basis once the actual costs of the program are determined. The Federal requirements do not prevent a permitting authority from later adjusting the fee schedule downward, as long as the minimum fee demonstration requirements of 40 CFR 70.9 are met.

III. Final Action and Implications

A. Fulfillment of EPA Requested Modifications

The January 31, 1995, Federal Register notice proposing approval of the LLCHD program outlined two requirements prior to final action: (1) modifying the regulations to ensure that all ''applicable requirements'' of the CAA (as defined in 40 CFR 70.2) are identified in permit applications and throughout the permitting process; and (2) modifying provisions relating to minor permit modifications to ensure that certain changes, which may be modifications under Title I of the CAA, would not qualify for minor permit revision processing. In the proposal, EPA suggested that it could approve the LLCHD program if it adopted changes substantially similar to those adopted by Nebraska in the state's December 2, 1994, rule (see 60 FR 5885). On May 16,

1995, the Lincoln-Lancaster Board of Commissioners adopted these modified amendments, based on the state's December 2, 1994, amendments, and these were submitted to EPA on May 23, 1995.

The March 7, 1995, Federal Register notice proposing approval for the state of Nebraska and city of Omaha programs also outlined two requirements prior to final action: the state must submit the December 2, 1994, amendments to Title 129, and the city of Omaha must incorporate these amendments by reference and submit them to EPA.

The state of Nebraska submitted these amendments on June 14, 1995, following signature by the Governor on May 29, 1995. On March 21, 1995, the city of Omaha adopted these amendments by reference to become effective 15 days after the state's December 2, 1994, amendments became effective (June 13, 1995—based on the May 29, 1995, approval by the Governor). Thus, all three agencies have met the final requirements for final full approval.

B. Variances

One issue of EPA concern with state programs is the ability of a part 70 source to obtain a waiver from any applicable requirement. The Nebraska Department of Environmental Quality (NDEQ) has the authority to issue a variance from requirements imposed by state law in Nebraska Revised Statute § 81–1513.

However, the EPA regards the Nebraska variance provision, and similar local agency regulatory provisions, as wholly external to the programs submitted for approval under part 70, and EPA is consequently taking no action on these variance provisions. The EPA has no authority to approve provisions of state and local authority, such as the variance provisions, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain and comply with the terms of a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70.

The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to obtain and comply with a part 70 permit in a manner inconsistent with part 70 requirements.

C. Final Action

1. *Regulations.* The EPA is promulgating full approval of the operating permits program submitted to EPA for the state of Nebraska, city of Omaha, and LLCHD submitted on November 15, 1993. Each agency has demonstrated its respective program will be adequate to meet the minimum elements of an operating permits program as specified in 40 CFR part 70.

This approval includes the following regulations adopted by each agency:

a. NDEQ, Title 129, Nebraska Air Quality Regulations, amended May 29, 1995. This includes the following chapters of the regulations insofar as they apply to Title V: 1, 2, 5–15, 29, 40–44.

b. 1993 Lincoln-Lancaster County Air Pollution Control Program, Version March 1995, dated May 16, 1995. This includes the following citations insofar as they apply to Title V: Article 1, Sections 1–2, and 7; and Article 2, Sections 1, 2, 5–15, and 29.

c. Omaha Municipal Code, Section 41–2, 41–9 and 41–10; Ordinance 33506, dated March 21, 1995, which incorporates by reference Title 129.

2. *Jurisdiction.* The scope of the part 70 programs approved in this notice applies to all part 70 sources (as defined in the approved program), within the state of Nebraska, except any sources of air pollution over which an Indian Tribe has jurisdiction. See 59 FR 55813, 55815–18 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian Tribe, Band, Nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians, because of their status as Indians.'' See section 302(r) of the CAA; 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

3. *112(l).* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources, as well as sources not subject to part 70 requirements. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating full approval under section 112(l)(5) and 40 CFR 63.91 of these programs for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated.

4. *112(g).* The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Nebraska must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Nebraska lacks a program designed specifically to implement section 112(g). However, Nebraska does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period, because it would allow Nebraska to select control measures that would meet Maximum Available Control Technology, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

EPA is approving Nebraska's preconstruction permitting program under the authority of Title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary, during the transition period between 112(g) promulgation and adoption of a state rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V.

The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect, if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the Federal requirements.

IV. Administrative Requirements

A. Docket

Copies of the three submittals and other information relied upon for the final full approval, including public comments received and reviewed by EPA on the proposal, are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of these operating permit programs, the state of Nebraska and two local agencies have elected to adopt the program provided for under Title V of the CAA. These rules bind these entities to perform certain actions and also require the private sector to perform certain duties.

To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under statelaw. EPA has determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: October 6, 1995.

Dennis Grams,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Appendix A to part 70 is amended by adding the entry for the state of Nebraska, the city of Omaha, and LLCHD to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

State of Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

(a) The Nebraska Department of Environmental Quality submitted on November 15, 1993, supplemented by correspondence dated November 2, 1994, and August 29, 1995.

(b) Omaha Public Works Department submitted on November 15, 1993, supplemented by correspondence dated April 18, 1994; May 13, 1994; August 12, 1994; April 13, 1995; and April 19, 1995.

(c) Lincoln-Lancaster County Health Department submitted on November 15, 1993, supplemented by correspondence dated June 27, 1994. Full approval effective on: November 17, 1995.

(d) Reserved.

* * * * *

[FR Doc. 95–25844 Filed 10–17–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 125

[FRL–5312–2]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: This technical correction changes the title of the BMP guidance document from ''NPDES Best Management Practices Guidance Document'' to ''Guidance Manual for Developing Best Management Practices (BMP)'', and it changes who to contact to obtain a copy of the document.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Deborah G. Nagle at 202–260–2656.

SUPPLEMENTARY INFORMATION: This technical correction changes the title of the BMP guidance document from ''NPDES Best Management Practices Guidance Document'' to ''Guidance Manual for Developing Best Management Practices (BMP)'', and it changes who to contact in order to obtain a copy of the document.

EPA has determined that providing prior notice and opportunity for this correction is unnecessary since the rule changes no legal duties on any persons. For the same reasons, EPA believes there is good cause for making this correction to the CFR immediately effective. See 5 U.S.C. 553(d).

Because today's action simply changes an obsolete name and address, this action has no regulatory impact and is not a ''significant'' regulatory action within the meaning of E.O. 12866. It also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandate Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, this correction does not affect requirements under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 125

Environmental protection, Reporting and record keeping requirements, Water pollution control, Waste and disposal.

Dated: October 12, 1995.

Robert Perciasepe,

Assistant Administrator.

Part 125 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 125—CRITERIA AND STANDARD FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C 1251 *et seq.*

2. Subpart K, section 125.104 is amended by revising the comment following paragraph (b)(4)(iii) to read as follows:

§ 125.104 Best management practices programs.

* * * * *

(b) * * *
(4) * * *
(iii) * * *

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in publication entitled ''Guidance Manual for Developing Best Management Practices (BMP).'' Copies may be obtained by written request to the Office of Water Resource Center (mail code: 4100), Environmental Protection Agency, Washington, D.C. 20460].

* * * * *

[FR Doc. 95–25845 Filed 10–17–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BPD–482–CN]

RIN 0938–AD73

Medicare Program; Medicare Secondary Payer for Individuals Entitled to Medicare and Also Covered Under Group Health Plans; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; Correcting amendments.

SUMMARY: This document makes corrections to the final rule with comment period entitled ''medicare program; medicare secondary payer for individuals entitled to medicare and also covered under group health plans'' that was published in the Federal Register on Thursday, August 31, 1995 (60 FR 45344).

EFFECTIVE DATE: September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Roya D. Lotfi, (410) 786–1898

SUPPLEMENTARY INFORMATION:

Background

In the August 31, 1995 issue, we amended the rules to implement certain provisions of section 1862(b) of the Social Security Act, as amended by the Omnibus Budget Reconciliation Acts of 1986, 1989, 1990, and 1993 and the Social Security Act Amendments of 1994 that affected the Medicare secondary payer rules for individuals who are entitled to Medicare on the basis of age or who are eligible or entitled on the basis of end stage renal disease, and who are also covered under group health plans. We also established limits on Medicare payment for services furnished to individuals who are entitled to Medicare on the basis of disability and who are covered under large group health plans by virtue of their own or a family member's current employment status with an employer; and prohibit large group health plans from taking into account that those individuals are entitled to Medicare on the basis of disability.

The final rule with comment period that is the subject of these corrections was necessary because of the statutory changes referenced above. Those changes required a new subpart for the provisions that now apply generally to all group health plans and Medicare secondary payer situations. We also needed to make room for incorporating in logical order any additional regulations that may be required by future amendments to the Act.

Correction of Publication

As published, the final rule with comment period contains errors. Accordingly, the publication on August 31, 1995 of the final rule with comment that was the subject of FR Doc. 95–21265, is corrected as follows (see also correction published September 20, 1995 at 60 FR 48749):

In the preamble, we correct typographical errors on page 45358, first column, last paragraph. As corrected the first sentence reads:

''In contrast, a plan that is paying primary benefits takes into account ESRD-based eligibility if it attempts to shift that primary payment responsibility to Medicare when an individual becomes eligible for Medicare based on ESRD, or when an individual is already eligible for Medicare based on ESRD but has not completed the 18-month coordination period.''

Also in the preamble, on page 45360, third column, first paragraph, several words were inadvertently omitted from the third sentence. As corrected the sentence reads:

''However, section 13561(c)(2) and (3) of OBRA '93 provides that there will be an 18-month coordination period during which employer sponsored primary insurance plans must continue to pay primary benefits even if an individual who is eligible for or entitled to Medicare based on ESRD is also entitled to Medicare on another basis.''

In the regulations text of § 411.108(a)(8) on page 46364, we correct drafting errors by removing the words ''no more than the Medicare payment rate'' and adding the word ''less''; by removing the words ''but making payments at a higher rate'' and adding the word ''than''; and by adding the word ''furnished'' after the word ''services'' the second place it appears. As written, a group health plan could pay one dollar more than the Medicare rate, but less than the rate it pays for non-Medicare enrollees, and not be in violation of this paragraph. Paragraph (8) presents an example as the rule, when it should simply state that where the group health plan pays less for the same services for a Medicare beneficiary than for others, the group health plan has taken Medicare entitlement into account. (See § 411.161(b)(2)(iv).)

Also in the text, we are making a conforming change in the second sentence of §§ 411.163 (b)(2) and (b)(3) on page 45369 by removing the word ''If'' and adding the words ''Except as provided in paragraph (b)(4) of this section, if'' so that paragraphs (2) and (3) cannot be misconstrued to conflict with paragraph (4).

Finally in the text, we are making a change in the first sentence of § 411.172(b) to conform this section to § 411.170(a)(2) and the statutory provisions of section 1862(b) by adding ''and of subparagraph (iii) of § 411.170(a)(2)'' after the word ''section''.

List of Subjects in 42 CFR Part 411

Exclusions from Medicare, Limitations on Medicare payments, Medicare, Recovery against third parties, Reporting and recordkeeping requirements.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

42 CFR Part 411 is corrected by making the following correcting amendments:

1. The authority citation for Part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.108 [Corrected]

2. In § 411.108, paragraph (a)(8) is revised to read as follows:

(a) *Examples of actions that constitute ''taking into account''.* * * *

(8) Paying providers and suppliers less for services furnished to a Medicare beneficiary than for the same services furnished to an enrollee who is not entitled to Medicare.

* * * * *

§ 411.163 [Corrected]

3. In § 411.163, paragraphs (b)(2) and (b)(3) are revised to read as follows:

* * * * *

(b) * * *

(2) *First month of ESRD-based eligibility or entitlement and first month*

of dual eligibility/entitlement after February 1992 and before August 10, 1993. Except as provided in paragraph (b)(4) of this section, if the first month of ESRD-based eligibility or entitlement and first month of dual eligibility/entitlement were after February 1992 and before August 10, 1993, Medicare—

(i) Is primary payer from the first month of dual eligibility/entitlement through August 9, 1993;

(ii) Is secondary payer from August 10, 1993, through the 18th month of ESRD-based eligibility or entitlement; and

(iii) Again becomes primary payer after the 18th month of ESRD-based eligibility or entitlement.

(3) *First month of ESRD-based eligibility or entitlement after February 1992 and first month of dual eligibility/entitlement after August 9, 1993.* Except as provided in paragraph (b)(4) of this section, if the first month of ESRD-based eligibility or entitlement is after February 1992, and the first month of dual eligibility/entitlement is after August 9, 1993, the rules of § 411.162(b) and (c) apply; that is, Medicare—

(i) Is secondary payer during the first 18 months of ESRD-based eligibility or entitlement; and

(ii) Becomes primary after the 18th month of ESRD-based eligibility or entitlement.

* * * * *

§ 411.172 [Corrected]

4. In § 411.172, paragraph (b) is revised to read as follows:

* * * * *

(b) *Special rule for multi-employer plans.* The requirements and limitations of paragraph (a) of this section and of (a)(2)(iii) of § 411.170 do not apply with respect to individuals enrolled in a multi-employer plan if—

(1) The individuals are covered by virtue of current employment status with an employer that has fewer than 20 employees; and

(2) The plan requests an exception and identifies the individuals for whom it requests the exception as meeting the conditions specified in paragraph (b)(1) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 13, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–25840 Filed 10–17–95; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 414

[BPD–830–F]

Medicare Program: Authority Citations; Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Technical Amendment.

SUMMARY: A final rule with comment period published on September 29 at 60 FR 50439 revised the authority citations of most of the Medicare rules and also made a nomenclature change in 42 CFR Part 414. In developing the document, we overlooked two of the sections that require the nomenclature change. This technical amendment corrects that oversight.

DATES: *Effective date:* This rule is effective as of September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias (202) 690–6383.

SUPPLEMENTARY INFORMATION:

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 414 is amended as set forth below.

1. The authority citation for part 414 continues to read as follows:

PART 414—[AMENDED]

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

§§ 414.28, 414.60 [Amended]

2. In §§ 414.28 and 414.60(a), ''physicians' services'' is revised to read ''physician services''.

(Catalog of Federal Domestic Assistance Program No. 93773, Medicare Hospital Insurance; Program No. 93.774, Medicare Supplementary Medical Insurance)

Dated: October 11, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–25839 Filed 10–17–95; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 486

[BPD–836–F]

Medicare Program: Suppliers of Specialized Services; Technical Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Technical amendment.

SUMMARY: A final rule with comment period, pertaining to providers and suppliers of specialized services, published on September 29, 1995 at 60 FR 50446, redesignated 42 CFR part 485, subpart D as 42 CFR part 486, subpart G, and corrected internal cross-references as required by the redesignation. This document corrects one cross-reference that we failed to identify in the final rule with comment period.

DATES: *Effective date:* This rule is effective as of September 29, 1995.

SUPPLEMENTARY INFORMATION:

List of Subjects in 42 CFR Part 486

Health professionals, Medicare, Organ procurement, X-rays.

42 CFR Part 486 is amended as set forth below.

PART 486—[AMENDED]

1. The authority citation for part 486 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C 1302 and 1395hh).

§ 486.304 [Amended]

2. In § 486.304(c)(1), ''subpart D of part 485'' is revised to read ''this subpart''.

(Catalog of Federal Domestic Assistance No. 93–773, Medicare—Hospital Insurance, and No. 93–774, Medicare—Supplementary Medical Insurance)

Dated: October 11, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–25838 Filed 10–17–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–316; RM–7059]

Radio Broadcasting Services; Rocky Mount, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denied an application for review filed by New East Communications, Inc. and Roanoke Chowan Broadcasting Corporation which argued that Station WSAY-FM's license should not have been modified from Channel 253A to Channel 253C3 at Rocky Mount. Instead, they argued that Stations WSAY-FM, WBCG(FM), Murfreesboro, NC and WCZI-FM, Washington, NC, should have been allowed to improve their facilities from 3 kW to 6 kW. The Commission affirmed the *Memorandum Opinion and*

Order on reconsideration in this proceeding, which had affirmed the *Report and Order*, 56 FR 19229, April 26, 1991, which substituted Channel 253C3 for Channel 253A at Rocky Mount and modified Station WSAY-FM's license to specify the higher class channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90–316, adopted July 31, 1995, and released August 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–25763 Filed 10–17–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–165; RM–8247]

Radio Broadcasting Services; Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission, pursuant to delegated authority, denies a Petition for Reconsideration filed by David W. Ringer (''Ringer'') of the action taken by the Acting Chief, Allocations Branch in MM Docket No. 93–165, establishing a filing window for the filing of applications for authorization to operate on Channel 240A in Athens, Ohio. *See* 59 F.R. 4008 (January 28, 1994). It also dismisses a Motion for Stay filed by Ringer. The Commission dismisses the reconsideration petition because the petitioner had actual knowledge that an original filing window for Athens had been suspended in an unpublished *Public Notice*. It rejects the contention that the wording of that *Public Notice* was so unclear as to have deprived petitioner of such notice. Accordingly, the *Public Notice* was effective in suspending the original filing window and the subsequent filing window for Athens, Ohio, established in a later *Order*, was valid.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93–165, adopted October 4, 1995, and released October 12, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–25760 Filed 10–17–95; 8:45 am]

BILLING CODE 6712–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1852, and 1870

Acquisition Regulation; Cost or Pricing Data

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule revises NASA policies on cost or pricing data in order to make the policies consistent with recently revised Federal-wide policies.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: William T. Childs, (202) 358–0454.

SUPPLEMENTARY INFORMATION:

Background

The Federal Acquisition Streamlining Act of 1994 (FASA) revised policy on cost or pricing data under the Truth in Negotiations Act (TINA), among other things. The TINA changes have been implemented in the Federal Acquisition Regulation (FAR), and those changes necessitate corresponding revisions of the NASA FAR Supplement (NFS). In addition, in the spirit of the National Performance Review, changes are being made to the NFS to provide clarity.

(a) Section 1815.804–1(a)(2), formerly 1815.804–3(a)(2), is deleted because it duplicates the revised FAR. A new paragraph is substituted to require that decisions to utilize the FAR cost or pricing data exception for one-offer adequate price competition situations must be approved by the head of the contracting activity, and copies of the approval and basis of price reasonableness must be sent to Headquarters Code HC.

(b) Section 1815.804–1(d), formerly 1815.804–3(d), is revised to accommodate the FAR reduction in approval level for cost or pricing data exceptions to the head of the contracting activity. The requirement to send a copy of the approval to Headquarters Code HC is retained, but some of the accompanying documentation is no longer required to be furnished to Headquarters Code HC.

(c) FAR 15.804–2(a)(2) specifies that below-threshold requirements for cost or pricing data must be approved by the head of the contracting activity. Section 1815.804–2(a) is added to require that copies of such approvals must be furnished to Headquarters Code HC.

(d) FAR 15.804–2(b)(2) provides that certificates of current cost or pricing data may be made applicable as of a date agreed upon by the parties. Section 1815.804–2 is amended to add paragraph (b) to provide guidance that the agreed date should generally be within two weeks of the date of price agreement.

(e) The dollar thresholds for formal prenegotiation reviews at 1815.807–71 are deleted and left to the centers' discretion.

(f) Most of the coverage in 1815.970–3(b) has been removed because it is addressed in subpart 1830.70 (60 FR 37983, July 25, 1995). The discussion of (AS 417 in 1815.970–3(c) has been substantially rewritten to remove a previous misinterpretation of CAS.

(g) Numerous editorial changes have been made. Numbering, section headings, and form titles have been revised to comport with the revisions in FAR subpart 15.8.

This rule pertains to internal NASA procedures only. Because there is no impact on the public, it is not required to be published for comment.

Impact

NASA certifies that this regulation 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.*). This rule does

not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1816, 1852 and 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1816, 1852, and 1870 are amended as follows.

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR parts 1815, 1816, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1815.8—Price Negotiation

2. The heading of section 1815.804 is revised to read as follows:

1815.804 Cost of pricing data and information other than cost or pricing data.

3. Section 1815.804–3 is redesignated as 1815.804–1 and the redesignated section is amended by revising the heading, revising paragraphs (a)(1) and (2), revising the first and last sentences in paragraph (a)(3)(i), and revising paragraphs (b), (c), (d), and (e)(3) to read as follows:

1815.804–1 Prohibition on obtaining cost of pricing data.

(a)(1) The term ''lowest evaluated price,'' as used in FAR 15.804–1(b)(1)(A), is defined to include all of the factors (for example, mission suitability, cost, past performance, etc.) used in the evaluation of proposals (but see paragraph (a)(2) of this section).

(2) When the adequate price competition exemption will be used in a single-offer situation, the exemption shall be approved by the head of the contracting activity. The exemption document shall cite the authority of 10 U.S.C. 2306a(b)(B), and the procedure in paragraph (d) of this section shall be used.

(3) * * *

(i) The use of this exemption for a cost-reimbursement procurement requires the careful exercise of judgment on the part of the contracting officer based on the application of the guidance in FAR 15.804.–1(b)(1)(A) and the regulations of this chapter to the facts of each procurement. * * * As a consequence, the failure to obtain cost or pricing data could result in a competing contractor intentionally underestimating its costs for the purpose of winning the award, which could then cause the actual contract costs to significantly exceed those proposed.

* * * * *

(b) When an exemption is granted under FAR 15.804–1(c)(4) for repetitive submissions of catalog items, Government approval of the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the exemption's continuation.

(c) When exempting submission under FAR 15.804–1(b)(2)(iii), the contracting officer shall document the reasons for the exemption. It is generally appropriate to include a description of the similarities and differences from a commercial item, along with a discussion of the actual sales prices of the commercial item and an explanation of the value of the differences from that item. If the fact of substantial sales to the general public is well known, information addressing the quantity of sales is not required.

(d) When the authority in FAR 15.804–1(a)(3) to grant an exception waiving the requirement for cost or pricing data is exercised, a copy of the approval shall be addressed to NASA Headquarters, Analysis Division, Code HC, and shall include the name and telephone number of the contracting officer and the basis for the contracting officer's determination of price reasonableness. The following is a sample format for the determination and findings for such a waiver.

National Aeronautics and Space Administration

[Installation Name]

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data

On the basis of the following findings and determination, the requirement for submitting cost or pricing data described below may be waived pursuant to the authority of 10 U.S.C. 2306a(b)(1)(B).

Findings

1. The (1) proposes to enter into a contract with (2) for the procurement of (3).

2. Pursuant to FAR 15.804–2, the proposed contractor is required to submit cost or pricing data. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated: (4)

Determination

The requirement for submission of cost or pricing data described in the above findings for the proposed procurement is hereby waived.

_____

Center Director

Date _____

Notes—

(1) Name of installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Identification of the cost or pricing data requirements to be waived. The waiver may be partial, for example, limited to a particular subcontractor. Also describe the circumstances and conditions that make the proposed procurement an exceptional case, and state the reasons justifying the proposed waiver.

(e)(1) * * *

(2) * * *

(3) The review and audit practices of the Government of Canada, the price assurance representations, and the adjustments rendered where profits are excessive are considered to satisfy the requirements of 10 U.S.C. 2306a. Therefore, NASA has waived the requirement for certification of cost or pricing data submitted by the CCC during the period April 1, 1990 through March 31, 1996. This waiver applies only to the certification and does not waive the requirement for submission of the data.

4. Section 1815.804–2 is added as follows:

1815.804–2 Requiring cost or pricing data.

(a) When an authorization to require cost or pricing data for a below-threshold procurement is granted pursuant to FAR 15.804–2(a)(2), a copy of the approval and supporting documentation shall be furnished to NASA Headquarters, Analysis Division, Code HC.

5. Section 1815.807–70 is amended in paragraph (d)(1) by republishing the first sentence and revising the second sentence and by revising the second sentence of paragraph (d)(2) to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(d) * * *

(1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. Explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. * * *

(2) * * * For each proposed subcontract meeting the requirement of FAR 15.806–2(a), provide the contracting officer's price or cost analysis and negotiation objective. * * *

* * * * *

6. Section 1815.807–71 is amended by revising the first sentence to read as follows:

1815.807–71 Installation reviews.

Each contracting activity shall establish a formal system for the review of prenegotiation memoranda. * * *

7. Section 1815.807–72 is amended by revising paragraph (a) to read as follows:

1815.807–72 Headquarters reviews.

* * * * *

(a) *Advance information to be provided to Headquarters.* The installation shall provide Code HS with the following, which shall be furnished as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review:

(1) Five copies of the PPM.

(2) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

* * * * *

8. Section 1815.870–1 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

1815.870–1 General.

(a) When subcontracts have been placed on a price-redetermination or fixed-price-incentive basis and the prime contract type is fixed-price redeterminable or F–PI (successive target), at the time of final pricing it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced that the amount included for subcontracting is reasonable, for example, when realistic cost information or pricing data on subcontract efforts are available.

(b) However, even though the available cost information are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices lower than those predicted in redetermining the prime contract price, other circumstances may require prompt negotiation of the final contract price. * * *

Subpart 1815.9—Profit

1815.970–2 [Amended]

9. Section 1815.970–2 is amended by removing the paragraph heading in paragraph (f)(1).

10. Section 1815.970–3 is amended by revising the citation ''1815.970(b)'' to read ''1830.7001'' in the first sentence of paragraph (a) and by revising paragraph (b) and removing paragraph (c) to read as follows:

1815.970–3 Facilities capital cost of money.

(a) * * *

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation and CAS 414.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

1816.203–4 [Amended]

11. In paragraph (c) of section 1816.203–4, the citation ''FAR 15.804.2 and –3'' is revised to read ''FAR 15.804–1 and 15.804–2''.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Tests of Provisions and Clauses

12. Section 1852.215–70 is amended by revising the date of the clause to read ''October 1995'' and revising paragraph (a) of the clause to read as follows:

1852.215–70 Increases in estimated costs.

* * * * *

(a) Increases resulting from updating or correcting the cost or pricing data submitted with the proposal;

* * * * *

13. Section 1852.243–70 is amended by revising the date of the clause to read ''October 1995'' and revising the first sentence of paragraph (d) of the clause to read as follows:

1852.243–70 Engineering change proposals.

* * * * *

(d) Concurrent with the submission of an ECP, the contractor shall, in accordance with FAR 15.804–6, provide a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with appropriate attachments. * * *

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.1—NASA Acquisition of Investigations System

14. In section 1870.102, paragraph VI of Appendix B to Appendix I is revised to read as follows:

1870.102 NASA acquisition of investigations.

* * * * *

VI. Status of Cost Proposals (U.S. Proposals Only)

The Investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 ''Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required)'' and certifications and representations required by law and regulation.

* * * * *

[FR Doc. 95–25858 Filed 10–17–95; 8:45 am]

BILLING CODE 7510–01–M

48 CFR Parts 1819 and 1852

Acquisition Regulation; Reduction of Subcontract Reporting

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends acquisition regulations in response to a Presidential memorandum on regulatory reform. This rule reduces the frequency of subcontract reporting.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

This rule makes regulatory changes in response to the Presidential Memorandum of April 21, 1995, on Regulatory Reform—Waiver of Penalties and Reduction of Reports (60 FR 20621, 4–26–95).

Quarterly Subcontracting Reports

Under 48 CFR 1852.219–75, NASA has required the submission of quarterly reports using Standard Form (SF) 295. The SF 295 gives the Agency a summary of subcontracts awarded under the Agency's contracts. The reports have been used by NASA to chart the Agency's progress in achieving a statutorily required small disadvantaged business goal. Annual reporting is not frequent enough to determine the extent of small disadvantaged business participation in NASA programs. However, in the interest of regulatory reform, NASA will reduce the frequency of SF 295 reports from quarterly to semiannually. NASA will also continue to rely on semiannual SF 294 reports of subcontracting activity under individual contracts. The SF 294 enables the Agency to administer subcontracting plans by monitoring the prime contractor's achievement of

subcontracting goals under individual contracts.

Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that requirement as follows:

Information collection using the SF 295 has been approved under OMB control numbers 2700–0073 and 9000–0007.

Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 1819 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1819 and 1852 are amended as follows:

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR Parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1819.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1819.708–70 [Amended]

2. Section 1819.708–70 is amended by removing the last sentence of paragraph (b).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The clause at section 1852.219–75 is amended by revising the date, revising paragraph (a), removing paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b) to read as follows:

1852.219–75 Small business and small disadvantaged business subcontracting reporting.

* * * * *

Small Business and Small Disadvantaged Business Subcontracting Reporting

(October 1995)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for the SF 295 remain in effect.

(b) * * *

(End of clause)

[FR Doc. 95–25859 Filed 10–17–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 101395A]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 13, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Central Regulatory Area was established by the final 1995 specifications of groundfish (60 FR 8470, February 14, 1995) as 4,610 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii) a directed fishing allowance for northern rockfish of 4,360 mt, with consideration that 250 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area.

After the effective date of this closure the maximum retainable bycatch amounts at § 672.20(g), apply at any time during a trip.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25847 Filed 10–13–95; 2:58 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 101095A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pollock by Vessels Catching Pollock for Processing by the Offshore Component in the Bering Sea Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the Bering Sea (BS) subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels catching pollock for processing by the offshore component. This action is necessary to fully utilize the allowance of the total allowable catch (TAC) of pollock for processing by the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 20, 1995, until 12 midnight, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–581-2062.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI Exclusive Economic Zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (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 for pollock in the BS by vessels catching pollock for processing by the offshore component was closed on September 20, 1995, in order to provide amounts anticipated to be needed for incidental catch in other fisheries (60 FR 49348, September 25, 1995). NMFS has determined that as of September 30, 1995, 15,764 metric tons remain unharvested.

The Director, Alaska Region, NMFS, has determined that the allowance of the TAC of pollock allocated for processing by the offshore component in the BS has not been reached. Therefore, NMFS is terminating the closure and is opening directed fishing for pollock in the BS for vessels catching pollock for processing by the offshore component beginning noon (A.l.t.) October 20, 1995, through December 25, 1995.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under OMB review under E.O. 12866.

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

Dated: October 12, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25862 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 201
Wednesday, October 18, 1995

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 Part 52

Standard Design Certification for the U.S. Advanced Boiling Water Reactor and the System 80+ Standard Designs; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will conduct a public meeting to discuss comments submitted on the proposed design certification rules (DCRs) for the U.S. Advanced Boiling Water Reactor (ABWR) and System 80+ Standard Designs. The applicant for certification of the U.S. ABWR design is GE Nuclear Energy and the applicant for certification of the System 80+ design is Combustion Engineering, Inc. The purpose of the public meeting is to provide an opportunity to clarify or elaborate on comments already submitted on the proposed DCRs.

DATES: Monday, December 4, 1995, 1:00 p.m.

ADDRESSES: 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building. The NRC buildings are located across the street from the White Flint Metro Station. The entrance to the auditorium is located underneath the glass pyramid, near the Two White Flint North Building.

Comments on the proposed design certification rules were received from the Department of Energy, the Nuclear Energy Institute, Ohio Citizens for Responsible Energy, 2 Architect-engineers, 3 reactor vendors, and 13 utilities. These comments are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson or Dino C. Scaletti, Office of Nuclear Reactor Regulation, Mail Stop 0–11 H3, U.S. NRC, Washington, DC 20555–0001, telephone (301) 415–3145 or (301) 415–1104, respectively.

SUPPLEMENTARY INFORMATION: The NRC has issued two proposed DCRs pursuant to Subpart B of 10 CFR Part 52, for comment (60 FR 17901). The comment period for these rules ended on August 7, 1995. The NRC is providing an opportunity to clarify and elaborate on the comments received to date. In order to facilitate the discussion of the written comments received on the DCRs, the NRC is holding a public meeting on this topic. The meeting will begin at 1:00 p.m. with registration beginning at 12:30 p.m.

Dated at Rockville, Maryland, this 11th day of October 1995.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25805 Filed 10–17–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–146–AD]

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

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 all Aerospatiale Model ATR–42 and ATR–72 series airplanes. Unless modifications are accomplished or alternative procedures and training are adopted, that AD currently prohibits operation of the airplane in certain icing conditions, and requires restrictions on the use of the autopilot in certain conditions. That AD was prompted by an FAA determination that, during flight in certain icing conditions, and with the airplane in a specific flight configuration, a ridge of ice can form on the wing and cause an interruption in the airflow over the ailerons, aileron deflection, and resultant lateral control forces. The actions specified by that AD are intended to prevent a roll upset from which the flight crew may be unable to recover. This action would add requirements for modification of the deicing boots on the leading edge of the wing and various follow-on actions.

DATES: Comments must be received by November 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

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 95–NM–146–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. 95–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 9, 1994, the FAA issued telegraphic AD T94–25–51, applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, to address an unsafe condition related to potential hazards associated with operation of those airplanes in icing conditions. That AD required an operational limitation that prohibits operation of the airplane when icing conditions [as defined in the Airplane Flight Manual (AFM)] are forecast or reported. It also required restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed.

That AD action was prompted by data obtained following an accident involving a Model ATR–72 series airplane that occurred when the airplane was enroute from Indianapolis to Chicago. The accident occurred during the initial descent for approach to Chicago. The airplane had been in a holding pattern for more than 30 minutes with flaps at the 15-degree position; icing conditions and turbulence were reported in the area.

The official cause of the accident has not been determined. However, preliminary information from the accident investigation indicates that, immediately after the autopilot disconnected, at an indicated airspeed of approximately 185 knots, the ailerons abruptly deflected in the right-wing-down direction, and the airplane entered an abrupt roll to the right, which was not corrected before the airplane impacted the ground.

Results of Flight Tests Conducted at Edwards Air Force Base, California

Prior to the issuance of telegraphic AD T94–25–51, Aerospatiale conducted wind tunnel and ground tests in Toulouse, France. Subsequent to the issuance of that AD, Aerospatiale contracted with the United States Air Force (USAF) to conduct a series of flight tests at Edwards Air Force Base, California. The test program was developed in conjunction with the National Transportation Safety Board (NTSB), National Aeronautics and Space Administration (NASA), the USAF, the FAA, and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France.

During these tests, a Model ATR–72 series airplane flew in close formation behind an ''icing tanker,'' which is a specially modified aerial refueling airplane designed to create icing conditions by spraying supercooled water droplets on a test airplane during flight. Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) defines droplet diameters, liquid water content, temperature, and horizontal extent parameters for testing leading to approval of flight in icing conditions. Water droplet diameters specified in part 25 of the Federal Aviation Regulations (FAR) for certification of transport category airplanes, and larger droplets well outside the diameters specified in part 25 of the FAR (commonly referred to as ''freezing rain or freezing drizzle''), were sprayed onto the leading edges of the outer wing and on other airplane surfaces to determine ice accretion characteristics of the various diameter droplets. Droplet diameters larger than those specified in part 25 of the FAR were tested since meteorological evidence exists indicating that the accident airplane encountered such large droplets (freezing rain or freezing drizzle) prior to the accident.

Results of data from the numerous flight tests conducted revealed the following significant findings:

—Ice accretion characteristics of the normal diameter droplets, as specified in the FAR, were entirely satisfactory. This confirmed that Model ATR–42 and ATR–72 series airplanes comply fully with performance requirements relating to the icing envelope specified in part 25 of the FAR for certification of these airplanes.

—Results of additional testing that was conducted with large water droplets (outside certification standards) revealed that it is possible for ice to accrete aft of the wing boot surface during a 17-minute exposure to the tanker spray when the aircraft operates with the flaps set at 15 degrees. Results of flight tests conducted with the flaps set at 15 degrees indicated that a spanwise ridge could disrupt the flow of air over the aileron when the flaps are retracted to the zero-degree position. This interruption of airflow caused an uncommanded aileron deflection and resultant unusual lateral control forces. However, during the tests conducted, the forces required to control the aircraft were within limits specified by the FAR.

—Exposure to freezing rain or freezing drizzle on the forward side windows of the cockpit produced ice on a substantial part of the forward side windows. This ice accretion on the forward side windows does not appear when the airplane is flying in the icing conditions defined in part 25 of the FAR. This characteristic ice accretion begins to form within 30 seconds of the beginning of the encounter with freezing rain or freezing drizzle. Additionally, test data indicate that the flight crew can observe the accumulation of ice on the forward side windows at least several minutes before a significant amount of ice accumulates on the wings.

The cause of the accident is still under investigation. However, in light of the findings discussed previously, the FAA has determined that if a Model ATR–42 or ATR–72 series airplane is in flight with the flaps set at 15 degrees during freezing rain or freezing drizzle, an unusual ridge of ice on the wing (aft of the ice protection boots) can accrete. This ridge can interrupt the airflow over the ailerons when the flaps are retracted to the zero-degree position. This interruption of airflow can cause an aileron deflection and resultant unusual lateral control forces. In actual operations, these unusual forces may result in a roll upset from which the flight crew may be unable to recover.

Explanation of the Provisions of AD 95–02–51

In an effort to break the chain of events that may lead to an aircraft roll upset, the manufacturer developed a set of procedures to be followed if the airplane should inadvertently encounter freezing rain or freezing drizzle conditions. These procedures were based on results of the tests conducted at Edwards Air Force Base. These procedures prohibit dispatch into or operation in known or forecast freezing rain or freezing drizzle, provide the

flight crew with a means to identify inadvertent encounters with freezing rain and freezing drizzle conditions, and describe appropriate corrective actions. Accomplishment of these procedures will ensure safe operation of the airplane while operating in all icing conditions, including inadvertent encounters with freezing rain or freezing drizzle.

These procedures were incorporated into several documents and related actions, which formed the basis for the FAA to expand operation of Model ATR–42 and ATR–72 series airplanes beyond that defined in telegraphic AD T94–25–51. Subsequently, on February 13, 1995, the FAA issued AD 95–02–51, amendment 39–9152 (60 FR 9616, February 21, 1995) to mandate the procedures developed by the manufacturer and approved by the FAA. Unless modifications are accomplished or alternative procedures and training are adopted, that AD continues to require an operational limitation that prohibits operation of the airplane when icing conditions (as defined in the AFM) are forecast or reported; and restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed. That AD also permits, as an interim measure prior to installation of an FAA-approved modification, operation of the airplane into icing conditions, provided that certain actions have been accomplished, as follows:

1. The FAA-approved AFM must be revised to incorporate ATR–42 AFM Temporary Revision 18, dated January 10, 1995 (for Model ATR–42 series airplanes); or ATR–72 AFM Temporary Revision 14, dated January 10, 1995 (for Model ATR–72 series airplanes).

2. All Model ATR–42 and ATR–72 flight crew members must attend an FAA-approved training course prior to flight in known or forecast icing conditions. This training course provides instruction in the recognition of characteristic ice accretion on the cockpit forward side windows. This course also defines the procedures designed to escape freezing rain and freezing drizzle conditions and to minimize the hazard posed by flight in freezing rain or freezing drizzle. Documents used in this training course include the following: ATR Icing Conditions Procedures Brochure, Version 1.0 or 2.0; ATR Technical Background Paper, Version 1.0, dated January 6, 1995; Flight Crew Operation Manual, Revision 20, dated January 11, 1995 (for Model ATR–42 series airplanes); and Flight Crew Operation Manual, Revision 12, dated January 11, 1995 (for Model ATR–72 series airplanes).

3. Operators must establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process.

4. Operators of Model ATR–72 series airplanes must install ATR Modification Number 4213 to eliminate the multi-function computer inhibition against flap extension. The modification permits movement of the flaps above limit speed to give crews more operational discretion in an emergency.

That AD also provides for an optional terminating action, which, if accomplished, would terminate the requirements of the AD. The optional terminating action, which must be approved by the FAA, involves installing a modification that precludes the formation of hazardous ice accumulation during flight in freezing rain or freezing drizzle conditions. The AD requires that, upon accomplishment of the optional terminating action, ATR Modification Number 4213 must be removed from Model ATR–72 series airplanes.

The expanded operation provided by AD 95–02–51 includes the resumption of dispatch of the airplane into or operation in known or forecast icing conditions. (However, as specified in the AFM revisions cited in that AD, flight into known or forecast freezing drizzle or freezing rain conditions continues to be prohibited.)

The procedures provided by AD 95–02–51 were permitted as an interim measure to allow resumption of normal flight operations in icing conditions until June 1, 1995, at which time an FAA-approved modification was to have been developed, tested, approved, and installed. The AD specifies that if such a modification was not installed by June 1, 1995, operation of the airplane when icing conditions are forecast or reported would again be prohibited and restrictions on the use of the autopilot in certain conditions would again be required.

Explanation of a Letter to Affected Operators

While AD 95–02–51 was being developed, the manufacturer was developing certain modifications to the deicing boots on the leading edges of the wing. Subsequently, Aerospatiale issued Service Bulletins ATR42–30–0059, Revision 1, dated April 10, 1995 (for Model ATR–42 series airplanes), and ATR72–30–1023, Revision 1, dated April 10, 1995 (for Model ATR–72 series airplanes). These service bulletins describe procedures for modification of the deicing boots by extending the coverage of the deicing boots on the leading edges of the outer wing. Accomplishment of the modification will increase the deiced area of the leading edges of the outer wing. [The Aerospatiale modification numbers are: 4216 (retrofit) and 4222 (production line), for Model ATR–42 series airplanes; and 4215 (retrofit) and 4221 (production line), for Model ATR–72 series airplanes. These modifications were approved by the FAA on March 20, 1995, as type design changes to Model ATR–42 and ATR–72 series airplanes.]

During development of those modifications and following issuance of AD 95–02–51, it became clear to the FAA that installation of modified deicing boots alone would not be sufficient to ensure an acceptable level of safety. Consequently, the FAA determined that certain existing flight crew procedures specified currently in AD 95–02–51 must remain in place and must be used in conjunction with the modified deicing boots. Further, the FAA recognized that a new AD to mandate installation of the deicing boots and observation of flight crew procedures could not be completed before the June 1, 1995, deadline specified in AD 95–02–51, and that sufficient justification existed to extend that deadline.

In light of this, the FAA approved an alternative method of compliance for the requirements of AD 95–02–51 in accordance with the provisions of paragraph (d) of that AD. This approval is contained in a letter that was distributed to all operators of the affected airplanes on May 26, 1995. The approval allowed continued operation of these airplanes in icing conditions beyond June 1, 1995, provided that certain additional procedures and restrictions were observed and modification of the deicing boots, as described previously, was accomplished.

The specific additional procedures and restrictions specified in the letter to operators included the following:

1. For Model ATR–72 series airplanes only, Aerospatiale Modification 4213, ''Flaps Extension Inhibition Above VFE 15 ,'' must be installed (or remain installed, if already accomplished). Procedures for accomplishment of the modification are contained in Aerospatiale Service Bulletin ATR72–27–1039, dated January 12, 1995. The modification removes the flap movement cutout at speeds greater than

185 knots to provide flight crews more operational discretion in an emergency.

2. Flight crew training based on the revised ATR Icing Procedures Brochure ''Freezing Drizzle: Towards a Better Knowledge and a Better Protection,'' Issue 1, dated May 11, 1995, must be conducted prior to flight in icing conditions, and at least annually thereafter, for all ATR–42 and ATR–72 flight crews. (Training conducted previously in compliance with AD 95–02–51 may serve as the initial training for purposes of computing the training interval.)

3. ATR–42 AFM Temporary Revision 20, dated May 1995 (for Model ATR–42 series airplanes), or ATR–72 AFM Temporary Revision 16, dated May 1995 (for Model ATR–72 series airplanes), must be inserted into the Limitations Section of the respective AFM. These temporary revisions specify that dispatch or operation into known freezing rain or freezing drizzle conditions is prohibited. Once inserted, the AFM revision required by AD 95–02–51 may be removed.

The FAA determined that observing the procedures and restrictions outlined above, in addition to installing modified deicing boots, will provide an additional margin of safety during flight in icing conditions or during an inadvertent encounter with freezing rain or freezing drizzle conditions. The FAA also determined that the procedures identified in the letter to operators will provide the flight crews with an acceptable means to identify and safely exit those conditions.

It should be noted that the procedures specified in the letter to operators are essentially the same as those mandated by AD 95–02–51 with the exception that the letter allows dispatch into forecast (but not actual or reported) freezing rain or freezing drizzle conditions, while the AD prohibits such dispatch. Based on its determination that installing the modifications and observing the operational procedures and restrictions discussed previously will provide an additional margin of safety while flying in icing conditions, the FAA finds that the restriction specified in AD 95–02–51 concerning dispatch into forecast (but not actual or reported) freezing drizzle or freezing rain conditions can be eliminated.

Explanation of the Provisions of the Proposed AD

Based on the information discussed previously, and since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA proposes to supersede AD 95–02–51 with a new AD with the following requirements:

Unless modifications are accomplished or alternative procedures and training are adopted, the proposed AD would continue to prohibit operation of the airplane in certain icing conditions, and requires restrictions on the use of the autopilot in certain conditions.

The proposed AD would require installation of the FAA-approved modification of the deicing boots on the leading edges of the wing, which must be used in conjunction with certain flight crew procedures. Accomplishment of the modification and observation of the flight crew procedures would terminate the requirements of AD 95–02–51, thereby allowing operation of the airplane in certain icing conditions, allowing use of the autopilot in certain conditions, and eliminating the restriction specified in that AD concerning dispatch into forecast (but not actual or reported) freezing drizzle or freezing rain conditions.

In addition, the FAA finds that the requirement specified in AD 95–02–51 for operators to establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process must be retained in this proposed AD.

The proposed actions would be required to be accomplished in accordance with various documents described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

Cost Estimate

The airplane models affected by this proposed AD action are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

There are approximately 158 Model ATR–42 and ATR–72 series airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 95–02–51 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators of the actions currently required is estimated to be $9,480, or $60 per airplane.

The AFM revision that is proposed in this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators for the proposed AFM revision is estimated to be $9,480, or $60 per airplane.

Accomplishment of training concerning the use of icing forecasts and reports, as proposed in this AD, would be approximately $300,000 annually, or $1,900 per airplane. Accomplishment of flight crew training based on the Icing Procedures Brochure discussed previously, as proposed in this AD, would cost approximately $150,000 annually, or $950 per airplane.

For Model ATR–42 series airplanes, Modification 4216 (or 4222), as proposed in this AD, would take approximately 52 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact on U.S. operators for this proposed modification is estimated to be $492,960, or $3,120 per airplane.

For Model ATR–72 series airplanes, Modification 4215 (or 4221), as proposed in this AD, would take approximately 96 work hours per airplane to accomplish. Required parts for this modification would be supplied by the manufacturer at no cost to operators. Modification 4213, as proposed in this AD, would take approximately 4 work hours to accomplish. Required parts would cost approximately $200 per airplane. The average labor rate for accomplishment of both modifications is $60 per work hour. Based on these figures, the total cost impact on U.S. operators for these proposed modifications is estimated to be $979,600, or $6,200 per airplane.

The total cost impact figures discussed above are based on

assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9152 (60 FR 9616, February 21, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Aerospatiale: Docket 95–NM–146–AD. Supersedes AD 95–02–51, Amendment 39–9152.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating in icing conditions, as defined in the Airplane Flight Manual (AFM), accomplish the following:

(a) For all airplanes: Except as provided in paragraphs (b) and (c) of this AD, within 24 hours after receipt of telegraphic AD T94–25–51, incorporate the following information into the Limitations Section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''(1) Operation of the airplane into forecast or reported icing conditions, as such conditions are defined in the AFM, is prohibited.

''(2) Use of the autopilot is prohibited during inadvertent flight in icing conditions, as defined in the AFM, or when the airplane is operated in moderate or greater turbulence.

''(3) If any unusual lateral trim situations are observed, such as excessive trim displacement; illumination of the message 'RETRIM ROLL R WING DN' or 'RETRIM ROLL L WING DN' on the advisory display unit (ADU); illumination of the message 'AILERON MISTRIM' on the ADU; or abnormal flight characteristics of the airplane: Disconnect the autopilot and manually fly the airplane prior to adjusting the lateral trim. The autopilot may be re-engaged following manual adjustment of the lateral trim.''

(b) For Model ATR–42 series airplanes: Within 6 months after the effective date of this AD, accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), and (b)(4) of this AD. Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Modify the deicing boots on the leading edges of the wing by accomplishing Aerospatiale Modification 4216 (during retrofit) or 4222 (during production) in accordance with Aerospatiale Service Bulletin ATR42–30–0059, Revision 1, dated April 10, 1995.

(2) Insert ATR–42 AFM Temporary Revision 20, dated May 1995, into the Limitations Section of the FAA-approved AFM. Once inserted, the AFM revision required by AD 95–02–51 may be removed from the AFM.

Note 2: This may be accomplished by inserting copies of Temporary Revision 20 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision 20.

(3) Establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process. Training concerning the use of these icing forecasts and reports shall be accomplished at intervals not to exceed one year in accordance with Flight Standards Information Bulletin ''ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures,'' dated January 11, 1995.

Note 3: Training conducted previously in compliance with the requirements of AD 95–02–51, amendment 39–9152, may serve as initial training for purposes of computing the training interval.

(4) Prior to flight in known or forecast icing conditions, and thereafter at intervals not to exceed one year, conduct flight crew training based on the revised ATR Icing Procedures Brochure ''Freezing Drizzle: Towards a Better Knowledge and a Better Protection,'' Issue 1, dated May 11, 1995.

Note 4: Training conducted previously in compliance with the requirements of AD 95–02–51, amendment 39–9152, may serve as initial training for purposes of computing the training interval.

(c) For Model ATR–72 series airplanes: Within 6 months after the effective date of this AD, accomplish the requirements of paragraph (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD. Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Modify the deicing boots on the leading edges of the wing by accomplishing Aerospatiale Modification 4215 (during retrofit) or 4221 (during production) in accordance with Aerospatiale Service Bulletin ATR72–30–1023, Revision 1, dated April 10, 1995.

(2) Install Aerospatiale Modification 4213, ''Flaps Extension Inhibition Above V_{FE} 15°,'' in accordance with Aerospatiale Service Bulletin ATR72–27–1039, dated January 12, 1995.

(3) Insert ATR–72 AFM Temporary Revision 16, dated May 1995, into the Limitations Section of the FAA-approved AFM. Once inserted, the AFM revision required by AD 95–02–51 may be removed from the AFM.

Note 5: This may be accomplished by inserting copies of Temporary Revision 16 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the

information contained in the general revisions is identical to that specified in Temporary Revision 16.

(4) Establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process. Training concerning the use of these icing forecasts and reports shall be accomplished at intervals not to exceed one year in accordance with Flight Standards Information Bulletin ''ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures,'' dated January 11, 1995.

Note 6: Training conducted previously in compliance with the requirements of AD 95–02–51, amendment 39–9152, may serve as initial training for purposes of computing the training interval.

(5) Prior to flight in known or forecast icing conditions, and thereafter at intervals not to exceed one year, conduct flight crew training based on the revised ATR Icing Procedures Brochure ''Freezing Drizzle: Towards a Better Knowledge and a Better Protection,'' Issue 1, dated May 11, 1995.

Note 7: Training conducted previously in compliance with the requirements of AD 95–02–51, amendment 39–9152, may serve as initial training for purposes of computing the training interval.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on October 12, 1995.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25836 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–127–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

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 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires a revision to the FAA-approved Airplane Flight Manual (AFM) which specifies that autothrottles must be disconnected if engine surge (stall) is detected during takeoff. That AD was prompted by results of an accident investigation, which revealed that the digital flight guidance computer (DFGC) on these airplanes can incorrectly identify an engine surge or stall as being an engine failure. This can cause the autothrottles to unclamp and automatically advance the thrust levers during takeoff. The actions specified in that AD are intended to prevent automatic advance of the thrust lever on a surging engine during takeoff, which could cause engine failure. This action would require the installation of a modified DFGC's which, when accomplished, would terminate the requirement for the AFM revision.

DATES: Comments must be received by December 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; telephone (310) 627–5245; fax (310) 627–5210.

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 95–NM–127–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. 95–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 23, 1992, the FAA issued AD 92–10–13, amendment 39–8247 (57 FR 19249, May 5, 1992), applicable to all McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. That AD requires a revision to the Limitations Section and the Procedures Section of the FAA-approved Airplane Flight Manual (AFM), which specifies that autothrottles must be disconnected if engine surge (stall) is detected during takeoff. That action was prompted by an

ongoing investigation following an accident involving a Model DC–9–80 series airplane, which revealed that the digital flight guidance computer (DFGC) apparently can incorrectly identify an engine surge or stall as being an engine failure, and cause the autothrottles to unclamp and subsequently advance the thrust levers during takeoff. The requirements of that AD are intended to prevent automatic advance of the thrust lever on a surging engine during takeoff, which could cause engine failure.

In the preamble of that AD, the FAA indicated that the requirements of that rule were considered interim action until final action is identified, at which time the FAA may consider further rulemaking. As a follow-on action from that determination, the FAA is now proposing to mandate a terminating action for the requirements of that rule.

Explanation of Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD80–22–111, dated May 23, 1995, which describes procedures for modification of DFGC's having part number 4034241–971. The modification entails incorporation of several improvements to the flight software and corresponding hardware in the DFGC's. Once this modification is accomplished, the DFGC's are re-identified as ''part number 4034241–972.'' The subject DFGC's are located in the electrical/electronics (E/E) compartment on the left and right radio racks. (The McDonnell Douglas service bulletin references Honeywell Service Bulletin 4034241–22–44, dated May 22, 1995, as an additional source of service information.)

Additionally, for DFGC's having part numbers other than (lower than) part number 4034241–971, the McDonnell Douglas service bulletin references additional procedures that are necessary to be accomplished prior to installing the subject modification. These additional procedures are intended to bring those DFGC's to the level of configuration of DFGC's having part number 4034241–971. Once that level is reached, those DFGC's subsequently would be modified in accordance with the service bulletin and re-identified as part number 4034241–972.

Modification of the DFGC's to the part number 4034241–972 configuration will positively address the unsafe condition presented by a DFGC incorrectly identifying an engine surge or stall as being an engine failure. This condition could cause the autothrottles to unclamp and subsequently advance the thrust levers during takeoff, which could cause engine failure.

Explanation of the Proposed Rule

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 92–10–13, but would continue to require a revision to the Limitations Section and Procedures Section of the FAA-approved AFM, which specifies that autothrottles must be disconnected if engine surge (stall) is detected during takeoff.

The proposed AD also would require installation of modified DFGC's having part number 403241–972. Accomplishment of this installation would constitute terminating action for the currently required AFM revision. The installation would be required to be accomplished in accordance with the McDonnell Douglas service bulletin described previously.

Cost Impact

There are approximately 1,117 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 643 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 92–10–13 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators of this current requirement is estimated to be $38,580, or $60 per airplane.

The FAA estimates that the removal of DFGC's having part number 4034241–971 and installation of DFGC's having part number 4034241–972 would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The required parts would cost approximately $2,000 (that is, $1,000 per DFGC, and 2 DFGC's per airplane). Based on these figures, the cost impact on U.S. operators of this proposed installation is estimated to be $1,324,580, or $2,060 per airplane.

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

Should an operator have an airplane equipped with DFGC's having part numbers other than (lower than) 4034241–971, additional actions may be required prior to accomplishing the installation proposed in this action. Those additional actions involve modification(s) of the DFGC's to bring them to the level of configuration of DFGC's having part number 4034241–971. Depending on the current configuration of the DFGC's installed on the airplane, the highest costs associated with modifying a DFGC to a part number 4034241–971 configuration (excluding subsequent modification to the part number 4034241–972 configuration) could be as much as $92,000 per airplane (that is $46,000 per DFGC, and 2 DFGC's per airplane).

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8247 (57 FR 19249, May 5, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–127–AD. Supersedes AD 92–10–13, Amendment 39–8247.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes equipped with digital flight guidance computers (DFGC) having part numbers other than 4034241–972; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent automatic thrust lever advance on a surging engine during takeoff, which could cause engine failure, accomplish the following:

(a) Within 30 days after May 20, 1992 (the effective date of AD 92–10–13, amendment 39–8247), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Limitations Section

Autothrottles must be disconnected if engine surge (stall) is detected during takeoff.''

(b) Within 30 days after May 20, 1992 (the effective date of AD 92–10–13, amendment 39–8247), revise the Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Procedures Section

CAUTION

During takeoff, the Digital Flight Guidance Computer (DFGC) engine failure logic is armed if (1) the flight director pitch axis is in takeoff mode, (2) the aircraft is above 400 feet radio altitude, and (3) both engine pressure ratios (EPR's) are below the go-around EPR limit. If the DFGC detects an EPR drop greater than or equal to 0.25 EPR and 7% N1 from the same engine, as compared to the other engine, the engine failure logic is satisfied and the DFGC will change the Thrust Rating Panel (or indicator) thrust limit to Go-Around (GA). This will cause the autothrottle system to unclamp and enter normal EPR limit (EPR LIM) mode where the throttles will maintain the higher engine EPR at the selected go-around thrust rating EPR LIM. Such an EPR and N1 drop may also result from an engine surge (stall). Advancing thrust levers on a surging engine will hinder surge recovery and may result in eventual engine failure.

If an engine surge (stall) is detected during takeoff:

(1) Disconnect autothrottles.

(2) Reduce thrust on affected engine (idle if necessary).

(3) Shut down the affected engine if surging and popping continues.

(4) If affected engine surging or popping stops, accomplish the following:

A. Place ignition switch to GRD START & CONTIN.

B. Place ENG anti-ice switches to ON.

C. Place PNEU X-FEED VALVE lever OPEN on affected side.

D. Place AIR FOIL anti-ice switches ON.

E. Advance affected throttle slowly.

(5) If engine surging or popping returns, turn the ENG anti-ice switch OFF.

(6) After normal operation has been established, the autothrottles may be re-engaged.

Note: A NO MODE light may be annunciated due to abnormal bleed configuration.''

(c) Within 60 months after the effective date of this AD, remove any DFGC having a part number other than 4034241–972, and replace it with a DFGC having part number 4034241–972, in accordance with McDonnell Douglas Service Bulletin MD80–22–111, dated May 23, 1995. Once these actions are accomplished, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed.

Note 2: McDonnell Douglas Service Bulletin MD80–22–111, dated May 23, 1995, references Honeywell Service Bulletin 4034241–22–44, dated May 22, 1995, as an additional source of service information.

Note 3: Paragraph 1.B of McDonnell Douglas Service Bulletin MD80–22–111, dated May 23, 1995, specifies certain concurrent actions that affect airplanes equipped with DFGC's having part numbers other than 4034241–971.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on October 12, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25837 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 929 and 937

Florida Keys National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings on proposed rules.

SUMMARY: The OCRM is announcing the dates and places of public hearings on a proposed rule published in the Federal Register of March 30, 1995 (60 FR 16399) concerning the Florida Keys National Marine Sanctuary.

DATES: For the dates of the hearings see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: For the locations of the hearing see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ben Haskell at (305) 743–2437. Copies of the DEIS/MP and Proposed Rules are available upon request to the Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050.

SUPPLEMENTARY INFORMATION: The Florida Keys National Marine Sanctuary was designated by Congress and the President (P.L. 101–605) on November 16, 1990 in order to protect the natural and historic resources in this unique and significant area of our nation. The Draft Environmental Impact Statement/ Management Plan (DEIS/MP) and Proposed Rules for the Florida Keys National Marine Sanctuary has been available for public review since March 30, 1995. The purpose of these hearings is to receive comments from the public on the DEIS/MP and Proposed Rules. The comments expressed at these hearings, as well as written comments received on the DEIS/MP and Proposed Rules, will be considered in the preparation of the Final Environmental Impact Statement/Management Plan (FEIS/MP) and Rules. Written comments may be submitted at these public meetings or mailed to the Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. The comment period ends on December 31, 1995.

Date, Time and Place:

November 1, 7:00 pm: Radisson Center, Palm Room 1 & 2, 777 NW 72nd St., Miami, FL

November 3, 7:00 pm: Key Largo Sheraton, 97000 Overseas Highway, Key Largo, FL

November 6, 6:00 pm: Marathon High School Cafeteria, 350 Sombrero Beach Rd., Marathon, FL

November 7, 7:00 pm: Key West High School, 2100 Flagler Ave, Key West, FL

November 9, 7:00 pm: Florida Marine Research Institute Auditorium, 100 Eighth Ave SE, St. Petersburg, FL

November 14, 1:00 pm: National Oceanic and Atmospheric Administration Conference Room, 1st Floor, 1305 East West Highway, Silver Spring, MD

Public Participation: The hearings will be open to public participation. Seats will be available on a first-come first-served basis. Individual speakers will be given a 3 minute time limit and organizations will be given a 5 minute time limit.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: October 12, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–25816 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

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

ACTION: Proposed rule; reopening of the record; request for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record on a proposed standard that allows the use of high-voltage longwall equipment in production areas of underground coal mines and sets out electrical safety standards for the use of this equipment. Because it has been some time since the record closed, MSHA is reopening the record, to provide all interested parties an opportunity to submit additional comments.

DATES: Written comments must be submitted on or before November 17, 1995.

ADDRESSES: Send written comments to MSHA, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

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

SUPPLEMENTARY INFORMATION: On December 4, 1989 (54 FR 50062), MSHA published a proposed rule to revise the electrical safety standards for underground coal mines. That proposal addressed all of the Agency's electrical standards for underground coal mines and would have allowed the use of high-voltage longwall equipment in production areas; however, it did not specifically focus on the safety issues related to the use of high-voltage longwall equipment. The Agency published a new proposed rule on August 27, 1992 (57 FR 39036) relating specifically to the use of high-voltage longwall equipment in underground coal mines. This proposed rule would eliminate the need for operators to submit petitions for modification when they wish to use high-voltage longwall equipment. The comment period closed on November 13, 1992. Because it has been some time since the record closed, MSHA is reopening the record for comments.

Dated: October 12, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–25757 Filed 10–17–95; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 25

[CC Docket No. 92–297; PP–22; DA 95–2033]

Redesignating the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule: Extension of Time for Filing Reply Comments.

SUMMARY: The Chief, International Bureau granted two motions to extend the time for filing reply comments in the proceeding, relating to Local Multipoint Distribution Service and Fixed Satellite Services in the 28 GHz frequency band, to October 10, 1995. The extension of time allows all parties to respond meaningfully to the many views and technical analyses presented in the dozens of comments file. This proceeding is of importance to all segments of the satellite and terrestrial communications industries that are seeking an allocation of spectrum in the 28 GHz band and resolution of inter-service sharing issues would serve the public interest.

DATES: Reply comments are due by October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Gilsenan, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0736, or Kathleen Campbell, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0729.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 22, 1995
Released: September 25, 1995

By the Chief, International Bureau:

1. By this Order, we grant an extension of time, until October 10, 1995, in which to file reply comments in response to the Third Notice of Proposed Rulemaking and Supplemental Tentative Decision in CC Docket No. 92–297 (60 FR 43740, August 23, 1995). This action is taken in response to motions submitted by GE American Communications, Inc. (''GE Americom'') and TRW Inc.

2. TRW indicates that an extension until October 10 would facilitate discussion and resolution of the specific details on inter-service sharing with other parties involved in this proceeding. GE argues that grant of an extension would allow adequate time to consider and respond to all issues and detailed technical exhibits submitted in the comments, as well as alleviate time pressures on personnel who are also preparing filings for Commission proceedings with contemporaneous deadlines.

3. We believe that an extension of time until October 10, 1995, is reasonable. This proceeding is of importance to all segments of the satellite and terrestrial communications industries that are seeking the allocation of spectrum in the 28 GHz band. Resolution of inter-service sharing issues would serve the public interest.

4. Accordingly, pursuant to Section 0.261 of the Commission's rules on delegation of authority, 47 CFR 0.261, GE American Communications, Inc.'s and TRW Inc.'s motions for extension of time for filing reply comments in the above-captioned proceeding are granted to the extent indicated. The date for filing comments is extended until October 10, 1995, the Tuesday following the Columbus Day federal holiday.

Federal Communications Commission.
Scott Blake Harris,
Chief, International Bureau.
[FR Doc. 95–25817 Filed 10–17–95; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–156; RM–8701]

Radio Broadcasting Services; Shelton, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sound Broadcasting, Inc., proposing the allotment of Channel 233A at Shelton, Washington, as the community's first local FM transmission service. Channel 233A can be allotted to Shelton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northwest to avoid short-spacings to the licensed sites of Station KMPS-FM, Channel 231C, Seattle, Washington, and Station KUKN(FM), Channel 233A, Kelso, Washington. The coordinates for Channel 233A at Shelton are North Latitude 47–14–43 and West Longitude123–10–25. Recognizing that the allotment of Channel 233A would be short-spaced to the proposed allotment of Channel 233C at Vancouver, British Columbia, we have determined that no potential interference would result from this allotment. Therefore, since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested for the allotment of Channel 233A at Shelton, Washington, as a specially-negotiated allotment.

DATES: Comments must be filed on or before December 4, 1995 and reply comments on or before December 19, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Ave., NW., Suite 500, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–156, adopted October 3, 1995, and released October 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 95–25761 Filed 10–17–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 87–268; DA 95–2137]

Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for filing comments and reply comments.

SUMMARY: The Commission, pursuant to delegated authority, grants motions filed by the Advanced Television Committee of the Electronics Industries Association, the Information Technology Industry Council, and jointly by the Association of America's Public Television Stations and the Public Broadcasting Service, and extends the time for filing comments in response to the *Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry* issued in this proceeding. The intended effect is to allow industry groups to form consensus opinions for their comments.

DATES: Comments must be filed on or before November 15, 1995, and reply comments must be filed on or before January 12, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 776–1653.

SUPPLEMENTARY INFORMATION:

1. On July 28, 1995, the Commission, as part of its ongoing Advanced Television rulemaking proceeding, adopted a *Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry* (''*Fourth Further Notice*''), FCC 95–315, released August 9, 1995, 60 FR 42130 (August 15, 1995). Comments on the *Fourth Further Notice* were due on October 18, 1995, and reply comments on December 4, 1995.

2. On September 21, 1995, the Advanced Television Committee of the Electronic Industries Association (''Committee'') filed a ''Motion of the EIA/ATV Committee for Extension of Time.'' That Motion sought an extension of the comment and reply comment deadlines until November 1, 1995, and December 18, 1995, respectively. In support of that request, the Committee notes that, while it is sponsored by the Electronics Industries Association (''EIA''), its membership is not limited to EIA member companies. The current comment deadline, the Committee asserts, coincides with the EIA's annual conference, at which the Committee is next expected to meet. At this meeting, the Committee continues, it will finalize its position with respect to the issues raised in the *Fourth Further Notice*. The Committee does not believe that the brief extension it requests will prejudice any party; to the contrary, it believes that the Commission and the public will benefit ''if the comments (it files) in this proceeding reflect the broad intra- and inter industry consensus which the EIA/ATV Committee seeks to develop.''

3. Subsequently, on October 4, 1995, the Information Technology Industry Council (''ITI'') filed a request for an extension of the comment deadline until November 29, 1995. In support, it asserts that its membership is diverse, representing the computer, information technology, and consumer electronics industries, and the additional time will be necessary to determine whether a consensus exists among ITI members on some or all of the many complex issues raised in the *Fourth Further Notice*.

4. Also on October 4, 1995, the Association of America's Public Television Stations and the Public Broadcasting Service (''Public Television'') jointly filed a request for an extension of the comment deadline until December 13, 1995. While it welcomes the Commission's attention to the issue of whether to adopt special measures to facilitate noncommercial broadcasters' conversion to ATV, Public Television notes that this matter is also under consideration by Congress. Public Television seeks an extended comment period to allow its comments to reflect Congressional action, which it expects by the middle of November.

5. We are mindful that Section 1.46 of the Commission's Rules, 47 CFR § 1.46, articulates a Commission policy that extensions of time for filing comments in rulemaking proceedings are not to be routinely granted. Nevertheless, in the instant case, we find that good cause exists for extending the comment and reply comment deadlines. Allowing the various affected industry groups time to develop consensus opinions that they would submit in comments could be most helpful to us as we consider and resolve the many complicated issues raised in the *Fourth Further Notice*. In addition, there are benefits to be derived from affording other parties an adequate opportunity for reasoned replies to those comments. However, we hesitate to extend the comment date until December 13, 1995, as requested by Public Television, because we do not want to unnecessarily delay the conclusion of this lengthy proceeding. Parties can address any Congressional action that occurs after the comment date we are establishing in reply comments. If necessary, another Further Notice of Proposed Rule Making can be issued. We do not anticipate that it will be necessary to allow a further extension of the time to file comments or replies in response to the *Fourth Further Notice*. Accordingly, we will extend both the comment and reply comment deadlines for approximately one month.

6. Accordingly, it is ordered, that the Motion of the EIA/ATV Committee for Extension of Time relative to the *Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry* in MM Docket No. 87–268, is granted. It is further ordered, that the Motion of the Information Technology Industry Council and the Request by the Association of America's Public Television Stations and the Public Broadcasting Service for an Extension of Time are granted to the extent indicated herein and, in all other respects are denied.

7. It is further ordered, that the time for filing comments in the above-captioned proceeding is extended to November 15, 1995, and the time for filing reply comments is extended to January 12, 1996.

8. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR §§ 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–25814 Filed 10–17–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 90

[PR Docket No. 92–235, DA 95–2090]

Examination of Exclusivity and Frequency Assignment Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 15, 1995, the Commission adopted a Further Notice of Proposed Rule Making that seeks to introduce market forces into the private land mobile radio (PLMR) bands below 800 MHz (60 FR 37148, July 19, 1995). On September 12, 1995, the Commission granted a request from the American Public Transit Association and granted in part and denied in part a request from the Land Mobile Communications Council (LMCC) to extend the comment period in the above captioned proceeding. On September 20, 1995, LMCC Filed a petition for reconsideration of that extension order to extend the comment period to November 20, 1995 and the reply comment period to January 5, 1996. LMCC stated that the additional time is necessary to develop an organized and effective spectrum allocation plan. This order grants the requested extension of time in which commenters have to file comments and reply comments.

DATES: Comments are to be filed on or before November 20, 1995, and reply comments are to be filed on or before January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0616.

SUPPLEMENTARY INFORMATION:

Adopted: October 2, 1995.
Released: October 3, 1995.

Order Extending Comment and Reply Comment Period

By the Chief, Private Wireless Division:

1. On September 12, 1995, the Commission extended the comment and reply comment period in the above-captioned proceeding in response to motions filed by the American Public Transit Association (APTA) and the Land Mobile Communications Council (LMCC).[1] In that Order, the comment date was extended from September 15, 1995, to October 16, 1995, and the reply comment date was extended from October 16, 1995, to November 20, 1995. This extension was consistent with the request filed by APTA, but shorter than the LMCC request. LMCC has filed a petition for reconsideration requesting a further extension of the comment period to November 20, 1995, and the reply comment period to January 5, 1996.

2. LMCC states that a further extension of time is warranted in order that the period for filing comments in this proceeding coincides with the due date of the industry's report on radio service consolidation.[2] LMCC states that in order to develop an organized and effective spectrum allocation plan, consolidation decisions must be made in conjunction with the decisions in this proceeding.

3. Although we previously extended the comment period in this proceeding by thirty days, LMCC correctly points out that additional time is necessary because many of the issues regarding future frequency assignment policies for the private land mobile radio services are closely related to the issues concerning the consolidation of these radio services. We therefore grant LMCC's request for reconsideration to extend the time period for filing comments to and including November 20, 1995, and for filing reply comments to and including January 5, 1996. The new comment date coincides with the due date for the industry's report on radio service consolidation.

4. Accordingly, it is hereby ordered that LMCC's request for reconsideration to extend the deadline for filing comments in this proceeding is granted.

5. This action is taken pursuant to the authority provided in Section 1.46 of the Commission Rules 47 C.F.R. § 1.46.

[1] DA 95–1967, 60 Fed Reg 48490 (September 19, 1995).

[2] The Private Land Mobile Industry was given three months from the effective date of the rules adopted in the Report and Order, PR Docket No. 92–235, 60 Fed. Reg. 37152, (July 19, 1995), in which to develop and submit a consensus plan for consolidating the twenty private land mobile radio services.

Federal Communications Commission.

Herbert W. Zeiler,

Deputy Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–25762 Filed 10–17–95; 8:45 am]

BILLING CODE 6712–01–F

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1160

[Ex Parte No. 55 (Sub-No. 96)]

Freight Operations by Mexican Motor Carriers—Implementation of North American Free Trade Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules.

SUMMARY: The purpose of this Notice is to announce implementation of the provisions of the second phase of the North American Free Trade Agreement (NAFTA) relating to land transportation, and to promulgate rules and develop an application form required to carry out the provisions. Under existing law, effective December 18, 1995, the Commission will process applications filed by Mexican motor carriers of property for operating authority to provide service across the United States-Mexico international boundary line to and from points in California, Arizona, New Mexico, and Texas, and by persons of Mexico who establish enterprises in the United States seeking to distribute international cargo in the United States.

DATES: Comments must be filed by November 7, 1995.

ADDRESSES: An original and 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 96) must be sent to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard, (202) 927–5500 or Stanley M. Braverman, (202) 927–6316. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Section 6 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. 10922(m)) imposed a 2-year moratorium (subject to renewal) on the Commission's issuance of new grants of operating authority to motor carriers domiciled in or owned or controlled by persons of Mexico or Canada. Under this statute, the President has the authority to remove or modify the moratorium if he determines it to be in the national interest, i.e., if overriding economic or foreign policy considerations make such an action advisable, or if a negotiated settlement with one country or the other can be reached. Under the moratorium, the President must notify Congress in writing 60 days before the date on which the removal or modification is to take effect.

Shortly after the moratorium went into effect, the President exercised his authority and removed the moratorium with respect to Canada. The President indicated in a memorandum to the United States Trade Representative that the United States and Canada had reached a bilateral understanding that would ensure fair and equitable treatment for both U.S. and Canadian motor carriers on both sides of the international boundary line. 47 FR 54053 (1982).

The moratorium remained in place for Mexican motor carriers because the Mexican Government continued to restrict U.S. motor carriers' access to Mexico. The moratorium prohibits Mexicans from seeking operating authority that carriers of other nations can obtain.[1]

NAFTA was signed on December 17, 1992. It ''entered into force'' (i.e., it took effect) on January 1, 1994. NAFTA contemplates that the moratorium on Mexican motor carriers will be lifted in phases, and that restrictions imposed by the Mexican government on U.S. carriers operating in Mexico will be similarly relaxed.[2] The phases are as follows:

1. The first phase of NAFTA granted access to Mexican charter and tour bus operators to provide international transportation service between Mexico and all points in the United States;[3]

2. Three years after signature (December 17, 1995), NAFTA provides for access by Mexican motor property carriers into United States border States, and establishment of

[1] The moratorium does not entirely bar Mexican carriers from operating in the United States. Pursuant to the provisions of 49 U.S.C. 10922(m) and 10530, Mexican carriers may operate in the United States, but only in United States border commercial zones, and only pursuant to certificates of registration known as ''MX certificates.''

[2] The NAFTA schedule of liberalization does not remove all limitations on Mexican motor carrier operations in the United States. The moratorium will remain in place for Mexican carriers in the one area that was not liberalized, namely, point-to-point carriage of domestic cargo in the United States. This means that Mexican property carriers will be able to operate only in international commerce (between points in the United States and points in Mexico), but they will not be able to engage in transportation between points in the United States.

[3] *In Passenger Operations By Mexican Carriers—NAFTA*, 9 I.C.C.2d 1258 (1993), we crafted a special authorization for international charter and tour bus service.

companies to distribute international cargo within the United States;[4]

3. Three years after entry into force (January 1, 1997), NAFTA provides for access by Mexican regular-route passenger carriers to perform international service to all points in the United States;

4. Six years after entry into force, NAFTA provides for access for cross-border operations by Mexican motor property carriers to all points in the United States; and

5. Seven years after entry into force, NAFTA provides for bus services by Mexican carriers between points in the United States.

Pursuant to 49 U.S.C. 10922(m)(2)(A), the President notified Congress, on November 4, 1993, in a Statement of Administrative Action to Implement NAFTA, of his intention to modify the moratorium in conformity with the entry phases of NAFTA. We are thus instituting a rulemaking proceeding, in anticipation of the President's specific modification of the moratorium, to implement phase 2 of NAFTA, which governs international cargo transportation between the U.S.-Mexico international boundary and points in the four U.S. border States, as well as the distribution and transportation of international cargo by a Mexican-owned or controlled company based in the United States.

We will require operating certificates for private as well as for for-hire Mexican carriers of property (including exempt commodities),[5] because the current moratorium on grants of authority to Mexican carriers clearly includes Mexican private carriers and carriers of exempt commodities. Indeed, the phase 2 NAFTA entry provisions, which contemplate a partial lifting of the moratorium, define ''truck services'' as including for-hire, private, or exempt services. *North American Free Trade Agreement*, January 1, 1994, Annex I—United States (1–U–19); *see also North American Free Trade Agreement Implementation Act* (Dec. 8, 1993), Pub. L. No. 103–182, 107 Stat. 2057, 190 U.S.C.S. 3301 (1993).

Because NAFTA is designed to provide simultaneous access to each country's border States for international shipments and to allow the establishment of carriers to carry international cargo, reciprocal treatment in practice must be achieved. Accordingly, to guard against a failure to adhere to the NAFTA principles of reciprocal access for U.S. carriers in Mexico, the Commission will issue conditional grants of authority to Mexican applicants (common carriers, contract carriers, private carriers, household goods carriers, and companies established to distribute international cargo within the United States). The certificates that we issue to Mexican motor carriers will usually be framed to authorize service:

> Over irregular routes, in foreign commerce, transporting general and exempt commodities (with the usual exceptions), between ports of entry on the international boundary between the U.S. and Mexico, on the one hand, and on the other, points in California, Arizona, New Mexico, and Texas.
>
> Condition: The duration of this grant is subject to the condition that U.S. carriers obtain reciprocal access in Mexico. This certificate will terminate 30 days after service of a Commission decision finding that reciprocal access has not been granted by Mexico.

The Commission, on its own motion or on petition by interested persons, may initiate a proceeding to determine whether Mexico has failed to grant reciprocal access. The U.S. Department of Transportation (DOT) will be invited to participate in any such proceeding. Upon a determination by the Commission that reciprocal access in Mexico has been denied, the conditional grants of authority to Mexican carriers would be terminated.[6]

Petitions to invoke the termination of these grants of authority will not be entertained in the absence of allegations of comprehensive efforts by Mexico to deny or discourage entry into or establishment of transportation operations within that country. All terminated grants would be reinstated upon a finding in a subsequent proceeding that reciprocity has been achieved.

In general, the application procedures and regulations that apply to United States for-hire carriers will also apply to Mexican carriers.[7] For example, to be issued operating certificates in accordance with current law, carriers must abide by all DOT safety regulations, comply with the Commission's insurance requirements (49 U.S.C. 10927, 49 CFR Part 1043), publish and file with the Commission applicable tariffs (49 U.S.C. 10761, 10762), and file with the Commission agents for service of process (49 U.S.C. 10330). After initiating service, carriers must maintain compliance with DOT's safety fitness standards. Failure to do so will result in the revocation of the authority.

Attached as Appendix A is the proposed OP–1MX Application and the instructions on how it should be completed. The application is designed to collect information from Mexican applicants seeking operating authority to conduct private and for-hire motor carrier cross border operations (including the carriage of exempt commodities) into and from the four United States border States, and for Mexican-owned or controlled enterprises established in the United States to transport international cargo in foreign commerce.

We believe that a separate application form designed to authorize this phase of NAFTA service will help to avoid confusion and errors, thereby improving the speed and efficiency of the application processing. At the request of the Federal Highway Administration, our application forms will alert applicants to the safety fitness conditions imposed on all certificates by the Commission in *Safety Fitness Policy*, 8 I.C.C.2d 123 (1991), and will require a certification that the applicant can produce records demonstrating compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations. Because certain Mexican carriers may want to file ''OP–2'' Forms seeking authority to operate only in U.S. border commercial zones under the more limited MX certificates, rather than operating under the broader conditional licenses contemplated here, we will continue to process requests for MX certificates, unless Congress amends or repeals section 10530.

We will provide a short comment period to enable interested persons to submit written views, arguments, or representations. Comments filed with the Commission must be identified as such and must comply with the requirements for filing pleadings specified at 49 CFR 1104.1–1104.3. Pursuant to 5 CFR 1320.5(a)(iv)(A)(6), comments may also be filed with the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20403.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, we have examined the impact of this proposed action on small businesses and small organizations. We expect that the new application form designated for Mexican applicants (Form OP–1MX), and the corresponding regulations, will simplify and clarify the application process. Use of the existing Form OP–1 for these new

[4] Because December 17, 1995 falls on a Sunday, we will begin processing applications on Monday, December 18, 1995.

[5] These certificates may be obtained through the filing of an ''OP–1MX Application form'' for Mexican carriers.

[6] Reciprocal treatment does not require the establishment of identical entry procedures in both countries. Rather, NAFTA simply mandates reciprocal access in the territories of both countries.

[7] *See* 49 CFR Part 1160, along with the proposed amendments required to implement phase 2 of NAFTA.

applications, by contrast, would cause confusion and would require more work on the part of Mexican carrier applicants. Therefore, the proposed action should reduce paperwork burdens on small businesses.

Paperwork Burden Analysis

We have submitted notice of this rulemaking and the new application Form OP–1MX, entitled Application for Operating Authority by Mexican Carriers Provided by the North American Free Trade Agreement, to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35]. The form is designed to collect information from Mexican carriers to allow the Commission to evaluate whether an operating authority proposal meets the Commission's standards for granting certificates of authority.

We estimate that an average of 1.5 burden hours will be required to complete the proposed form. The Commission estimates it will receive approximately 18,800 applications each year for a total of 28,200 burden hours. The estimated burden hours include time for reviewing instructions, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Environmental and Energy Considerations

We conclude that the rules proposed here will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1043

Insurance, Motor Carriers, Surety Bonds.

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

Decided: October 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1160 are proposed to be amended as set forth below:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.1 [Amended]

2. Section 1043.1 paragraphs (a)(1) and (b) are amended as follows:

a. In paragraph (a)(1) add the words ''or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities'' after the words ''No common or contract carrier''.

b. In paragraph (b) add the words ''nor any foreign (Mexican) common carrier of exempt commodities'' after the words ''title 49 of the U.S. Code''.

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 continues to read as follows:

Authority: 5 U.S.C 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928 and 11102.

4. In § 1160.1 a new paragraph (h) is added to read as follows:

§ 1160.1 Applications governed by these rules.

* * * * *

(h) Applications for Mexican carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between the U.S./Mexico border, and points in California, Arizona, New Mexico and Texas.

§ 1160.3 [Amended]

5. In § 1160.3, paragraph (a), remove the word ''and'' after the words ''of household goods;''; add the words ''and Form OP–1MX for Mexican motor property carriers'' after the words ''for water carriers''.

§ 1160.4 [Amended]

6. Section 1160.4, paragraphs (a)(1) and (d) are amended as follows:

a. In paragraph (a)(1) add the words '', Mexican motor property carriers that perform private carriage and transport exempt items,'' after the words ''(except household goods)''.

b. In paragraph (d) introductory text add the words '', including Mexican carrier applicants'' after the words ''household goods applications''.

c. In the Note at the end of § 1160.4 add the words ''Form OP–1MX for Mexican property carriers,'' after the words ''OP–1 for motor property carriers,''.

7. In § 1160.5 a new paragraph (a)(8) is added to read as follows:

§ 1160.5 Commission review of the applications.

(a) * * *

(8) All applications must be completed in English.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 7035–01–P

Appendix A—OP–1 MX Application

INTERSTATE COMMERCE COMMISSION
FORM OP-1MX
APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS PROVIDED BY THE NORTH AMERICAN FREE TRADE AGREEMENT

Approved by OMB
3120-0139
Expires 12/31/95

This application is for all Mexican carriers requesting authority to transport property (including exempt items) in foreign commerce between the U.S.-Mexico Border and points in California, Arizona, New Mexico and Texas and for all Mexican owned or controlled enterprises established in the United States to transport international cargo in foreign commerce.

FOR COMMISSION USE ONLY

Docket No. MX-_____

DOT No. _____

Filed _____

Fee No._____

CC Approval No._____

SECTION I

Applicant Information

Do you now have authority from or an application being processed by the ICC?
☐ NO ☐ YES If yes, identify the lead docket number(s)_____

LEGAL BUSINESS NAME

DOING BUSINESS AS NAME

BUSINESS ADDRESS

_____(___) _____
Street Name and Number City State Zip Code Telephone Number

MAILING ADDRESS (If different from above)

_____
Street Name and Number City State Zip Code

REPRESENTATIVE (Person who can respond to inquiries)

_____
Name and title, position, or relationship to applicant

_____
Street Name and Number City State Zip Code
Telephone Number (____)_____ FAX Number (____)_____

U.S. DOT Number (If available; if not, see Instructions.)_____

FORM OF BUSINESS (Check only one.)
☐ Corporation Mexican or U.S. State of Incorporation _____
☐ Sole Proprietorship Name of Individual _____
☐ Partnership Identify Partners _____
_____

SECTION II

Type of Authority

You must submit a filing fee for each type of authority requested (for each box checked).

☐ MOTOR COMMON CARRIER OF PROPERTY (except HOUSEHOLD GOODS)
☐ MOTOR CONTRACT CARRIER OF PROPERTY (except HOUSEHOLD GOODS)
☐ MOTOR COMMON CARRIER OF HOUSEHOLD GOODS
☐ MOTOR CONTRACT CARRIER OF HOUSEHOLD GOODS
☐ PRIVATE CARRIER
☐ UNITED STATES BASED ENTERPRISES TRANSPORTING INTERNATIONAL CARGO IN FOREIGN COMMERCE

SECTION III

Insurance Information

This section must be completed by ALL motor property carrier applicants. The dollar amounts in parentheses represent the minimum amount of bodily injury and property damage (liability) insurance coverage you must maintain and have on file with the Commission.

NOTE: Refer to the instructions for information on cargo insurance filing requirements for motor common carriers.

- ☐ Will operate vehicles having Gross Vehicle Weight Ratings (GVWR) of 10,000 pounds or more to transport:
  - ☐ Non-hazardous commodities ($750,000).
  - ☐ Hazardous materials referenced in the Commission's insurance regulations at 49 CFR 1043.2(b)(2)(c) ($1,000,000).
  - ☐ Hazardous materials referenced in the Commission's insurance regulations at 49 CFR 1043.2(b)(2)(b) ($5,000,000).
- ☐ Will operate only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,000 pounds to transport:
  - ☐ Any quantity of Class A or B explosives, any quantity of poison gas (Poison A), or highway route controlled quantity of radioactive materials ($5,000,000).
  - ☐ Commodities other than those listed above ($300,000).

APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS - OP-1MX (cont.d)

SECTION IV

Safety Certification

APPLICANTS SUBJECT TO FEDERAL MOTOR CARRIER SAFETY REGULATIONS - If you will operate vehicles of more than 10,000 pounds GVWR and are, thus, subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter 3, Subchapter B (Parts 350-399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

(1) Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;
(2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;
(3) Can produce on 48 hours notice records demonstrating compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations.
(4) Has in place a driver safety training/orientation program;
(5) Has prepared and maintains an accident register (49 CFR 390.15);
(6) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);
(7) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396); and
(8) Is familiar with and has in place a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 390.5).

☐ YES

Any authority sought pursuant to this application will remain in effect only as long as the carrier satisfies the safety fitness standards of the U. S. Department of Transportation. See Safety Fitness Policy, 8 I.C.C.2d 123 (1991).

APPLICANTS NOT SUBJECT TO THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS - If you will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials, you are exempt from Federal Motor Carrier Safety Regulations, and must certify as follows:

Applicant is familiar with and will observe general operational safety guidelines, as well as any applicable state and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

☐ YES

APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS - OP-1MX (cont.d)

SECTION V

Affiliations

AFFILIATION WITH OTHER ICC-REGULATED ENTITIES. Disclose any relationship you have or have had with any other ICC-regulated entity within the past 3 years. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, ICC number, DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

_____

_____

_____

SECTION VI

Household Goods Certifications

HOUSEHOLD GOODS MOTOR COMMON CARRIER APPLICANTS must certify as follows: Applicant is fit, willing, and able to provide the specialized services necessary to transport household goods. This assessment of fitness includes applicant's general familiarity with ICC regulations for household goods movements and also requires an assurance that applicant has or is willing to acquire the protective equipment and trained operators necessary to perform household goods movements. The proposed operations will serve a useful public purpose responsive to a public demand or need.

☐ YES

HOUSEHOLD GOODS MOTOR CONTRACT CARRIER APPLICANTS must certify as follows: Applicant is fit, willing, and able to provide the specialized services necessary to transport household goods. This assessment of fitness includes applicant's general familiarity with ICC regulations for household goods movements and also requires an assurance that applicant has or is willing to acquire the protective equipment and trained operators necessary to perform household goods movements. The proposed service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101.

☐ YES

NOTE: Applicant may attach a supporting statement to this application to provide additional information about any of the above certifications. This evidence is optional.

APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS - OP-1MX (cont.d)

SECTION VII

Applicants for Contract Carriage of Household Goods

SCOPE OF OPERATING AUTHORITY. Complete one or both box(es) below, as applicable.

☐ Contracting shippers have one or more of the distinct needs delineated in *Interstate Van Lines, Inc., Extension - Household Goods*, 5 I.C.C.2d 168 (1988).
Describe briefly the distinct need(s):

_____

_____

_____

☐ Contracts provide for assignment of one or more vehicles for the exclusive use of each shipper in the manner specified in *Interstate Van Lines, Inc., Extension - Household Goods*, 5 I.C.C.2d 168 (1988).

SECTION VIII

Applicant's Oath

This oath applies to all supplemental filings to this application. The signature must be that of applicant, not legal representative.

I, _____, verify under penalty of
Name and title

perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, under 21 U.S.C. 853a.

Signature _____ Date_____

APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS - OP-1MX (cont.d)

Filing Fee Information

All applicants must submit a filing fee for each type of authority requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of boxes checked in ***Section II***. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section II***: _____ x filing fee $_____ = $_____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT

☐ CHECK or ☐ MONEY ORDER, payable to: Interstate Commerce Commission

☐ VISA ☐ MASTERCARD

Credit Card Number _____ Expiration Date _____

Signature _____ Date _____

Fee Policy

- Filing fees must be payable to the Interstate Commerce Commission, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each type of authority requested. If applicant requests multiple types of permanent authority for example, common and contract carrier authority, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be sent, along with the original and one copy of the application, to Office of the Secretary (Attn: Applications), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423-0001.
- After an application is received, the filing fee is not refundable.
- The ICC reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. The application will not be processed until the fee is paid in full.

PAPERWORK BURDEN. It is estimated that an average of 1.5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Interstate Commerce Commission, Section of Publications, 1201 Constitution Avenue, N.W., Washington, DC 20423-0001, and to the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB No. 3120-0139), Washington, DC 20403.

INSTRUCTIONS FOR FORM OP-1MX
APPLICATION FOR OPERATING AUTHORITY BY MEXICAN CARRIERS PROVIDED BY THE NORTH AMERICAN FREE TRADE AGREEMENT

These instructions will assist you in preparing accurate and complete application filings. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. The application must be completed in English and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

SECTION I

ICC AUTHORITY. If you now have any Interstate Commerce Commission authority or have an application for authority being processed at the Commission, check the "YES" box and indicate the docket or the MX number you have been assigned. Example: MX-987654.

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be your full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the Commission uses computers to retain information about regulated carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business. Example: 756 El Camino Real, Jalisco. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent Commission notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify the Secretary in writing (Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423-0001) if the business or mailing address changes.

REPRESENTATIVE. If someone other than the applicant is preparing this form, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

U.S. DOT NUMBER. Applicants subject to the Federal Motor Carrier Safety Regulations are required to register with U.S. Department of Transportation (U.S. DOT) within 90 days after initiating service. Motor carriers that already have been issued a U.S. DOT registration number, should provide it; applicants that have not registered with U.S. DOT should refer to the U.S. DOT information sources under the "Additional Assistance" part of these Instructions.

FORM OF BUSINESS. A business is either a corporation, sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the authority applicant. If the business is a partnership, provide the name of each partner.

SECTION II

TYPE OF AUTHORITY. Check the appropriate box(es) for the type(s) of authority you are requesting. Note: A separate filing fee is required for each type of authority requested. See "Fee Policy" in the application form.

INSTRUCTIONS FOR FORM OP-1MX (cont.)

SECTION III

INSURANCE INFORMATION. Check the appropriate box(es) to describe the type of business you will be conducting. If you operate vehicles with a gross vehicle weight rating exceeding 10,000 pounds and haul only non-hazardous materials, you are required to maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the Commission's insurance regulations at 49 CFR 1043.2(b)(2)(c) require $1 million minimum liability coverage; those at 49 CFR 1043.2(b)(2)(b) require $5 million minimum liability coverage.

If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds, you must maintain $300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Class A or B explosives, any quantity of poison gas (Poison A), or highway route controlled quantity of radioactive materials, you must maintain $5 million minimum liability coverage.

Minimum levels of cargo insurance must be maintained by all motor property common carriers: $5,000 for loss of or damage to property carried on any one motor vehicle and $10,000 for loss of or damage to property occurring at any one time and place.

Appropriate insurance forms must be filed within **20 days** after the date notice of your application is published in the *ICC Register*: Form BMC-91 or BMC-91X for bodily injury and property damage, Form BMC-34 for cargo liability.

The ICC does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

SECTION IV

SAFETY CERTIFICATION. Applicants for motor carrier authority must complete the safety certification. You should check the "YES" response only if you can attest to the truth of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.

If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds and will not transport hazardous materials, you are exempt from the U.S. DOT safety fitness regulations; however, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable state and local laws relating to the safe operation of commercial motor vehicles.

You must check only <u>one</u> of the boxes in this section.

Failure to comply with the safety fitness standards of the U. S. Department of Transportation will result in the revocation of the motor carrier authority.

SECTION V

AFFILIATIONS. All applicants must disclose pertinent information concerning affiliations, if any, with other ICC-regulated entities.

SECTIONS VI AND VII

HOUSEHOLD GOODS CERTIFICATIONS. If you are applying for household goods common carrier or household goods contract carrier authority, you must complete the appropriate certification concerning these specialized services in Section VI.

If you are applying for household goods contract carrier authority, you also must provide the information concerning your operations in Section VII.

SECTION VIII

APPLICANT'S OATH. Applications may be prepared by the applicant or an authorized representative. In either case, <u>the oath must be signed by the applicant</u>. In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

INSTRUCTIONS FOR FORM OP-1MX (cont.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each state where operations are authorized. Process agents who will accept legal filings on applicant's behalf are designated on ICC Form BOC-3. Form BOC-3 must be filed within 20 days after the date notice of the application is published in the *ICC Register.*

TARIFFS

All household goods motor common carriers and all motor common carriers that will participate in collectively set rates must have tariffs on file with the Commission and in effect before beginning operations. If you require assistance in tariff matters, contact the Commission's Automated Response Capability (ARC) telephone system - (202) 927-7600.

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every state in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate authorities. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by selecting the state of California, New Mexico or Texas as your base state for payment of registration fees. See 49 CFR Part 1023. You should select the state in which you will operate the largest number of motor vehicles in the next year and contact that state's transportation agency to obtain registration forms and instructions. Failure to accomplish this state registration could subject you to substantial state penalties as well as the potential loss of your operating authority.

MAILING INSTRUCTIONS

To file for authority you must submit an original and one copy of this application with the appropriate filing fee to ICC Headquarters and one copy to the ICC Regional Office that corresponds with your business location.

NOTE: RETAIN A COPY OF THE COMPLETED APPLICATION FORM AND ANY ATTACHMENTS FOR YOUR OWN RECORDS.

Mailing addresses for applications:

HEADQUARTERS

Interstate Commerce Commission
Office of the Secretary
ATTN: APPLICATIONS
1201 Constitution, N. W.
Washington, DC 20423-0001

REGIONAL OFFICES

Interstate Commerce Commission Xerox Center 55 West Monroe Suite 550 Chicago, IL 60603-5003 (312) 353-6204	The states of Campeche, Chiapas, Chihuahua, Coahuila, Durango, Guanajuato, Guerrero, Hidalgo, Mexico, Michoacan, Nuevo Leon, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatan, Zacatecas, and Distrito Federal.
Interstate Commerce Commission 211 Main Street Suite 500 San Francisco, CA 94105-1919 (415) 744-6520	The states of Aguascalientes, Baja California Norte, Baja California Sur, Colima, Jalisco, Morelos, Nayarit, Sinaloa, and Sonora.

ADDITIONAL ASSISTANCE

COMMISSION INFORMATION SOURCES

Additional information on obtaining operating authority or monitoring the status of your applications is available through the Commission's Automated Response Capability (ARC) telephone system. After dialing (202) 927-7600, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

Information Requested	MENU NUMBER
● Status of your application (NOTE: Tracking the status of your application can be simplified and expedited if you refer to the assigned docket number when making inquiries. You will be informed of your docket number by letter sent on the date notice of your application appears in the *ICC Register*.)	1
● Assistance in filing your application	3
● Status of insurance and process agent filings	2
● Tariff filing	4

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate ICC staff member who will be able to assist you in other areas.

U. S. DEPARTMENT OF TRANSPORTATION INFORMATION SOURCES

U.S. DOT Registration and Safety Ratings

- To obtain information on registering with U.S. DOT (filing Form MCS-150) or to request a safety fitness review, write to:

  Director, Motor Carrier Field Operations
  Federal Highway Administration
  U.S. Department of Transportation
  Washington, DC 20590

  or call: 800 832-5660

- For information concerning a carrier's assigned safety rating, call: (800) 832-5660

U.S. DOT Hazardous Materials Regulations

- To obtain information on whether the commodities you intend to transport are considered to be hazardous materials:

  Refer to the provisions governing hazardous materials in the Federal Motor Carrier Safety Regulations at Parts 170 through 189 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR Part 172, or contact U. S. DOT at (202) 366-6121.

- To obtain information about DOT hazardous materials transportation registration requirements:

  Contact U.S. DOT at (202) 366-4109.

[FR Doc. 95–25773 Filed 10–17–95; 8:45 am]
BILLING CODE 7035–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 656

[I.D. 092595C]

Atlantic Striped Bass Fisheries; Public Hearings

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

ACTION: Notice of additional public hearing; extension of comment period.

SUMMARY: On September 29, 1995 and October 16, 1995, NMFS announced three public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations on the harvest and possession of striped bass in the exclusive economic zone of the Atlantic Ocean from Maine through North Carolina.

Due to requests from the public, NMFS now announces one additional public hearing and extends the comment deadline.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

DATES: Written comments on the proposed rule must be received on or before November 15, 1995. The hearings are scheduled as follows:

1. October 12, 1995, 7 to 9 p.m., Manteo, NC
2. October 16, 1995, 7 to 9 p.m., Toms River, NJ
3. October 25, 1995, 7 to 9 p.m., Plymouth, MA
4. November 9, 1995, 7 to 9 p.m., Norfolk, VA

ADDRESSES: Written comments should be sent to William Hogarth, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''Atlantic Striped Bass Comments.''

The hearings will be held at the following locations:

1. Manteo—North Carolina Aquarium, Roanoke Island, Manteo, NC 27954
2. Toms River—Ocean County Administration Building, 101 Hooper Ave., Room 119, Toms River, NJ 08754
3. Plymouth—Plymouth N. High School, Obery Street, Plymouth, MA 02360
4. Norfolk—Quality Inn Lake Wright Convention Center, 6280 Northampton Blvd., Norfolk, VA 23502

FOR FURTHER INFORMATION CONTACT: William Hogarth at 301–713–2339.

SUPPLEMENTARY INFORMATION: The hearing announcements were published on September 29, 1995 (60 FR 50540) and October 16, 1995.

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published September 27, 1995 (60 FR 49821), and is not repeated here. A copy of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids for the Norfolk, VA hearing should be directed to William Hogarth by October 20, 1995 (see **ADDRESSES**).

Authority: 16 U.S.C. 1851 note.

Dated: October 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25778 Filed 10–13–95; 9:16 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 201
Wednesday, October 18, 1995

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

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Draft Environmental Impact Statement for Eagle Creek Timber Sales, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement a draft environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to the draft environmental impact statement (EIS) for Eagle Creek Timber Sales on the Estacada Ranger District of the Mt. Hood National Forest. The draft EIS was released in July 1993. Following the release of the draft EIS, the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (Northwest Forest Plan) was signed on April 13, 1994. This new direction will require changes to the alternatives in the draft EIS. The alternatives will be revised to be in compliance with the new direction and be re-analyzed as a supplement to the existing analysis.

ADDRESSES: Submit written comments and questions about this supplement to the Estacada Ranger District, Mt. Hood National Forest, 595 NW Industrial Way, Estacada, Oregon 97023, Phone: (503) 630–6861.

FOR FURTHER INFORMATION CONTACT: John Berry, Estacada District Ranger, Mt. Hood National Forest. Mt. Hood National Forest, 595 NW Industrial Way, Estacada, Oregon 97023, Phone: (503) 630–6861.

SUPPLEMENTARY INFORMATION: The original proposed action was developed in accordance with the direction contained in the Mt. Hood National Forest Land and Resource Management Plan (1991). The Northwest Forest Plan has resulted in new circumstances and substantial changes to the original proposed action. The Northwest Forest Plan has designated this area as a Key Watershed and also allocated portions of the area to Late Successional and Riparian Reserves. Changes to the proposed action include: (1) No road building in the roadless area and no timber harvest within the Late Successional Reserve; (2) designing the harvest units consistent with the Standards and Guidelines in the Northwest Forest Plan; and (3) incorporating the results of the watershed analysis. Comments received from the draft EIS will be considered in the preparation of the supplement.

The supplement will be prepared and circulated in the same manner (exclusive of scoping) as the draft EIS (40 CFR 1502.9). The supplement to the draft EIS is expected to be available for public review and comment in February 1996. The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft supplement to the EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC,* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft supplement stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Due to these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issue and concerns on the proposed action, comments on the supplement to the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the supplement or the merits of the alternatives formulated and discussed in the supplement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

After the 45 day comment period ends on the supplement to the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1996. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The Responsible Official, Forest Supervisor Roberta Moltzen will consider the comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision and reasons for the decision in the Record of Decision.

That decision will meet the criteria of Section 2001(e) of Public Law 104–19 and is not appealable. This decision is subject to judicial review only in the United States court for the district of Oregon. As required under Section 2001(f)(1) of Public Law 104–19, any challenge to this project must be filed in the district court within 15 days after the advertisement of the sale.

Dated: October 5, 1995.

Roberta Moltzen,

Forest Supervisor.

[FR Doc. 95–25798 Filed 10–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

National Employers Survey II; Notice and Request for Comments

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before December 18, 1995.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steven Rudolph, Economic Planning and Coordination Division, Bureau of the Census, Washington, DC 20233, (301) 457–2586 voice and (301) 457–4433 fax.

SUPPLEMENTARY INFORMATION:

I. Abstract

In the Fall of 1994, the Census Bureau conducted the National Employers Survey for the National Center on the Employment Quality of the Workforce (EQW), a non-profit research group. This survey collected data for a regression-based econometric study on employment, hiring, training, investment, and productivity, as they relate to each other. We surveyed a representative panel of just over 3,000 domestic business establishments with 20 or more employees. This was the first attempt to measure the factors. The EQW began issuing findings from the study in February 1995 and the results generated great interest from all levels. Their first large-scale technical reports are now being issued.

Major findings included information on what attributes firms looked for when hiring new employees. They found that attitude and communications skills were highly valued by employers while grades and teachers' recommendations were not. Their analysis indicates that investment in human capital (training) had at least as big, and in many groups including services, or bigger return than investment in physical capital. These findings provide a baseline for employers, public and private, for formulating and gauging human resources decisions and policies in a manner that will provide the most effective return on productivity in the workplace.

As this was the first attempt to gather this type of data, responses in four areas were weak. This proposed follow up will address this problem by changing the intent of the original questions. In addition, as the original study was looking at relationships between, for example, training and productivity, it would be very useful to have data for consecutive years. This proposed survey will ask for a small amount of data for the following year.

The follow-up questions fall into four categories:

Updating last year's data (questions 1–6 are examples) these are designed to test the stability of the survey's initial findings that linked productivity to education. This is the central theme of the survey and the results' usefulness will be greatly increased with an additional data period.

Providing more precise definitions of the target population (who would be candidates for training) (question 8 is an example) the original question (number 14 in the initial survey) did not provide as clear an understanding of skills required by the categories of employees. We believe this version should improve the findings.

Providing greater detail where important policy considerations are at stake (questions 17 and 18 are examples) after reviewing results from the original questions, we felt that the attributes that employers valued during hiring could have been clarified and better specified.

Testing the initial results in areas that seem anomalous to prevailing wisdom (questions 19–23 are examples) in the initial findings the utilization rate for tuition remissions was relatively low. These questions should be better tailored to the information the respondents are likely to have at hand.

By surveying the original panel respondents, we need only ask the additional questions (which should take an average of 10 to 12 minutes).

In addition to the Department of Education, which had a basic interest in the project from its inception, other governmental agencies have shown a strong interest. This includes the GAO and the Department of Labor.

II. Method of Collection

We will conduct the survey with Computer Assisted Telephone Interviewing (CATI) as with the initial NES. Since the respondents are familiar with the survey, they would not require additional preparation and instruction. As with the initial survey, the EQW is analyzing relationships rather than tabulating totals. For this reason we will accept and encourage the use of reasonable estimates. This allows the sponsor to use the initial data more effectively as the new data will augment and add valuable information to the original data set. We will provide all respondents (or a panel member who does not or cannot respond to the interview) who indicate they want one, with a copy of the latest findings of the surveys.

III. Data

OMB Number: 0607–0787 (for original National Employers Survey).

Form Number: Not applicable.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Burden Hours: 600 hours.

Estimated Total Cost: $125,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 12, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–25806 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

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

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order listed below.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed

under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 C.F.R. § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

The anniversary month for the Certain Circular Welded Carbon Steel Pipe and Tube (P & T) from Taiwan antidumping duty order is May. With regard to P & T from Taiwan, the Department published its notice of intent to revoke the order on May 3, 1994. However, due to a ministerial oversight, the Department failed to notify the domestic interested parties of its action. On June 20, 1994, the Department sent a letter to the domestic interested parties notifying them of our previous action and informing them that any objections to the Department's intent to revoke the order on P & T from Taiwan must be made within 30 days. Domestic interested parties filed an objection on July 11, 1994.

On September 19, 1994, Kao Hsing Chang Iron & Steel Corporation (KHC), a respondent, requested that the Department revoke the order because no interested party had objected by the last day of May 1994. KHC, citing the Court of International Trade's (CIT) ruling in *Kemira Fibres Oy v. United States,* 861 F. Supp. 144 (Ct. Int'l Trade 1994), argued that the objection of July 11, 1994, ''was invalid because the objection ensued in response to an invitation erroneously extended as the time to issue the notice had expired and Commerce was obligated to revoke the order.'' The CIT held that, pursuant to 19 C.F.R. § 353.25(d)(4)(iii), if no interested party objects to the Department's notice of intent to revoke by the last day of the fifth anniversary month of the order, then the Department must revoke the order, regardless of the time limit for objections specified by the Department in its notice of intent to revoke.

On August 2, 1995, the Court of Appeals for the Federal Circuit (CAFC) overturned the CIT 's ruling in *Kemira Fibres Oy v. United States,* Slip Op. 95–1077 (Fed. Cir. Aug. 2, 1995). Among other things, the CAFC held that notice is of paramount importance in the ''sunset'' process:

> * * * there may be cases when administrative review is not warranted because interested parties are satisfied with an existing order. . . . In such a case, the domestic industry may have no incentive to request administrative review of the order. Thus, the absence of a request for administrative review, while it may indicate lack of interest, can also indicate satisfaction with the status quo. Consequently, Commerce may not reasonably conclude that there is a lack of interest in an outstanding order merely by the absence of a request for review, rather, only after publishing notice of proposed revocation may Commerce properly conclude that the order at issue is no longer of interest so as to be revocable.
>
> It is clear that notification of domestic parties so that their interest in revocation of an outstanding order may be ascertained and addressed is an overriding consideration in the regulatory framework and the legislative history of the antidumping statute. Given this, we conclude that Commerce's interpretation was a reasonable one. *See Chevron,* 467 U.S. at 844. Revocation must be predicated on a lack of industry interest and such interest must be ascertained through notification of an intent to revoke. The timing requirements of section 353.25(d)(4)(i)–(ii) are merely procedural aids in accomplishing this prerequisite to revocation. They are subordinate to the overriding requirement of notice. A contrary interpretation would defeat the clear intent of Congress.

Within the time frame specified in our notice to interested parties of June 20, 1994, we received objections from the ''domestic interested parties'' to our intent to revoke this antidumping duty order. Therefore, in accordance with the CAFC's decision, because the ''domestic interested parties'' timely objected to our intent to revoke, we no longer intend to revoke this antidumping duty order. Furthermore, in light of the CAFC's decision, the alternative arguments raised by the parties are moot.

Antidumping Proceeding

A–583–008

Taiwan

Certain Welded Carbon Steel Pipe & Tubes

Objection Date: July 11, 1994

Objector: Wheatland Tube Corporation

Contact: Michael Heaney at (202) 482–4475

Dated: October 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–25860 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

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

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on April 28, 1995, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–583–008

Taiwan
Certain Welded Carbon Steel Pipe & Tubes
Objection Date: May 26, 1995
Objector: Wheatland Tube Corporation
Contact: Michael Heaney at (202) 482–4475

Dated: September 5, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–25861 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 101195A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on November 13–16, 1995.

ADDRESSES: These meetings will be held at the Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, LA; telephone: (504) 524–0581.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Committees

November 13

1:00 p.m. - 3:00 p.m.—Convene the Mackerel Management Committee.

3:00 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee.

November 14

8:00 a.m. - 12:00 noon—Reconvene the Reef Fish Management Committee.

Council

November 14

1:30 p.m.—Convene to receive public testimony.

1:45 p.m. - 5:30 p.m.—Receive final public testimony on the red snapper total allowable catch (TAC) for the 1996 season, commercial quota and bag limits (NOTE: Testimony cards must be turned in to staff before the start of public testimony).

November 15

8:30 a.m. - 9:30 a.m.—Reconvene to continue public testimony.

9:30 a.m. - 12:30 p.m.—Receive a report of the Reef Fish Management Committee.

2:00 p.m. - 5:30 p.m.—Personnel Committee Selection Process (CLOSED SESSION).

November 16

8:30 a.m. - 9:00 a.m.—Reconvene to receive a report of the Personnel Committee (CLOSED SESSION).

9:00 a.m. - 10:30 a.m.—Receive a report of the Mackerel Management Committee.

10:30 a.m. - 10:45 a.m.—Receive a report of the ICCAT Advisory Committee.

10:45 a.m. - 11:00 a.m.—Discussion of the Bycatch Workshop.

11:00 a.m. - 11:45 a.m.—Receive Enforcement and Director's reports.

11:45 a.m. - 12:00 noon—Other Business to be discussed.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Readinger at the Council (see **ADDRESSES**) by November 6, 1995.

Dated: October 12, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25863 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 101095C]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Individual Fishery Quota (IFQ) Industry Implementation Team will meet in Anchorage, AK.

DATES: The meeting will be held on November 1–2, 1995, from 8:30 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the University of Alaska Observer Training Program office, 211 W. 7th Street, 2nd floor, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, 907–271–2809.

SUPPLEMENTARY INFORMATION: The Implementation Team will discuss industry recommendations for regulatory and plan amendments to the Sablefish and Halibut IFQ program in the EEZ off Alaska. An agenda should be available from the Council by October 23 (see **ADDRESSES**).

Special Accommodations

This meeting is accessible to persons with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 11, 1995

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25790 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 100695B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public meetings of its Golden Crab, Scientific and Statistical, Red Drum, Advisory Panel (AP) Selection, Shrimp, and Mackerel Committees; Golden Crab Advisory Panel (GCAP); and a Council session.

DATES: The meetings will be held from October 23 to October 27, 1995. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Coast Line Inn, 503 Nutt Street, Wilmington, NC 28411; telephone: (910) 763–2800.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION:

Meeting Dates

October 23, 1995, 1:30 p.m. to 5:00 p.m.—Scientific and Statistical Committee meeting;

The Scientific and Statistical Committee will review and develop recommendations to the Council on the Golden Crab Fishery Management Plan (FMP), the 1995 red drum stock assessment, and the weakfish stock assessment.

October 24, 1995, 8:30 a.m. to 10:30 a.m.—Red Drum Committee;

The Red Drum Committee will discuss results of the Red Drum assessment. At that time, the Red Drum Committee will review options for a rebuilding timeframe and develop recommendations for Amendment 1.

October 24, 1995, 10:30 a.m. to 12:00 noon—Advisory Panel Selection Committee;

The AP Selection Committee will meet in closed session to develop recommendations for appointment of AP members.

October 24, 1995, 1:30 p.m. to 5:00 p.m.—Shrimp Committee;

The Shrimp Committee will discuss and clarify additional material to be included in Draft Amendment 2 for public hearing. The Shrimp Committee will also review state bycatch reduction plans.

October 25, 1995, 8:30 a.m. to 10:30 a.m.—Mackerel Committee;

The Mackerel Committee will review the Gulf of Mexico Fishery Management Council's actions on Draft Amendment 8, and develop recommendations for options to take to public hearing for Council consideration. Amendments to the FMP must be approved by both the South Atlantic and the Gulf of Mexico Councils. The Committee will also hear a report on mackerel bycatch in the shark net fishery.

October 25, 1995, 10:30 a.m. to 12:00 noon—Golden Crab Advisory Panel;

The GCAP will review public hearing and NMFS/Agency comments, and develop recommendations for the Council.

October 25, 1995, 1:30 p.m. to 4:30 p.m.—Joint meeting of the Golden Crab Committee and Advisory Panel;

The GCAP then will meet jointly with the Golden Crab Committee to discuss public hearing and NMFS informal review comments. At that time, the GCAP will discuss Advisory Panel recommendations.

October 25, 1995, 4:30 p.m. to 5:30 p.m.—Golden Crab Committee;

October 26, 1995, 8:30 a.m. to 12:00 noon—Golden Crab Committee;

The Golden Crab Committee will hold an additional meeting to finalize recommendations for the Council.

October 26, 1995, 1:30 p.m. to 5:30 p.m.—Council session;

The full Council will convene and receive reports from the Golden Crab, Red Drum, AP Selection, Shrimp, and Mackerel Committees. The Council will take final action on the Golden Crab FMP for formal submission to the Secretary of Commerce. The Council will also select the options to take to public hearing for Shrimp FMP Amendment 2, and Mackerel FMP Amendment 8.

October 27, 1995, 8:30 a.m. to 9:00 a.m.—Council session; The Council will appoint AP members during a closed session;

October 27, 1995, 9:00 a.m. to 1:00 p.m.—Council session.

The Council will hear a report on the status of the Florida Keys National Marine Sanctuary and additional reports on the status of the Magnuson Fishery Conservation and Management Act amendments and reauthorization, the International Commission for the Conservation of Atlantic Tunas Commissioner's meeting, and state and agency liaison activities. The Council will also discuss the Atlantic Coastal Cooperative Statistics Program Memorandum of Understanding (MOU) and take action on whether or not to be a signatory to the MOU.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 16, 1995.

Dated: October 11, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–25791 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Ukraine

October 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 435 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 28580, published on June 1, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated May 6, 1995 between the Governments of the United States and the Ukraine, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 12, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Ukraine and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 12, 1995, you are directed to increase the limit for Category 435 to 94,350 dozen [1], as provided under the terms of the Memorandum of Understanding dated May 6, 1995 between the Governments of the United States and the Ukraine.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25801 Filed 10–17–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Futures Contract in Permian Basin Natural Gas

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Permian Basin natural gas futures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 17, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the NYMEX Permian Basin natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581, telephone 202–418–5275.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 12, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–25812 Filed 10–17–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0046]

Request for Public Comments Regarding OMB Clearance Entitled Type of Business

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0046).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Type of Business. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0046, Type of Business, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure that any subsequent contracts contain the proper provisions and clauses. This information is used by the Government in preparation of the contract and is then placed in the contract file and becomes a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes (.07 hr.) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14*; total annual responses, *1,111,558;* preparation hours per response, *.07;* and total response burden hours, *77,810.*

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25785 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0047]

Request for Public Comments Regarding OMB Clearance Entitled Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0047).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve

an extension of a currently approved information collection requirement concerning Place of Performance. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397*; responses per respondent, *14*; total annual responses, *1,111,558*; preparation hours per response, *.07*; and total response burden hours, *77,810*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25786 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0044]

Request for Public Comments Regarding OMB Clearance Entitled Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0044).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid/Offer Acceptance Period. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by filling in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,220*; responses per respondent, *40*; total annual responses, *128,800*; preparation hours per response, *.017*; and total response burden hours, *2,190*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25784 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0038]

Request for Public Comments Regarding OMB Clearance Entitled Mistake in Bid

AGENCIES: Department of Defense (DOD), General Service Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0038).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA, (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,673*; responses per respondent, *1*; total annual responses, *4,673*; preparation hours per response, *.5*; and total response burden hours, *2,337*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25779 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0041]

Request for Public Comments Regarding OMB Clearance Entitled Technical Proposal—Two-Step Sealed Bidding

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0041).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Technical Proposal—Two-Step Sealed Bidding. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMBE Control No. 9000–0041, Technical Proposal—Two-Step Sealed Bidding, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Two-step sealed bidding is a method of contracting designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step 1 consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word ''technical'' has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step 2 involves the submission of sealed price bids by those who submitted acceptable technical proposals in step 1. The requested information is needed, in the absence of adequate specifications, to develop a sufficiently descriptive and not unduly restrictive statement of the Government's requirements and to determine the acceptability of proposals received. The contracting officer evaluates the acceptability of the information received, based on the criteria in the request for proposals.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *8* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,225;* responses per respondent, *1;* total annual responses, *3,225;* preparation hours per response, *8;* and total response burden hours, *25,800.*

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25782 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0039]

Request for Public Comments Regarding OMB Clearance Entitled Descriptive Literature

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0039).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR

Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0039, Descriptive Literature, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *3*; total annual responses, *7,989*; preparation hours per response, *.167*; and total response burden hours, *1,334*.

Dated: October 12, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25780 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0043]

Request for Public Comments Regarding OMB Clearance Entitled Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0043.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Delivery Schedules. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0043. Delivery Schedules, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes) per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,440*; responses per respondent, *5*; total annual responses, *17,200*; preparation hours per response, *.167*; and total response burden hours, *2,872*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25783 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0040]

Request for Public Comments Regarding OMB Clearance Entitled Bid Sample Disposition Instructions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0040).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approved an extension of a currently approved information collection requirement concerning Bid Sample Disposition Instructions. This OMB clearance currently expires on January 31, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0040, Bid Sample Disposition Instructions, in all correspondence.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms submitting bids for Government contracts are occasionally required to submit samples of the product offered to show the characteristics of the item. When bid samples are required, bidders are requested to provide instructions for disposition of the samples after the Government has had a chance to inspect them. If no instructions are received, the samples are returned, collect, to the bidder.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *3*; total annual responses, *7,989*; preparation hours per response, *.167*; and total response burden hours, *1,334*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25781 Filed 10–17–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG96–3–000, et al.]

China U.S. Power Partners I, Ltd., et al.; Electric Rate and Corporate Regulation Filings

October 11, 1995.

Take notice that the following filings have been made with the Commission:

1. China U.S. Power Partners I, Ltd.

[Docket No. EG96–3–000]

On October 4, 1995, China U.S. Power Partners I, Ltd. (''CUPPI''), with its principal office at Church Street, Clarendon House, Hamilton HM11, Bermuda filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CUPPI is a limited liability company organized under the laws of Bermuda. CUPPI will be engaged directly, through an Equity Joint Venture, and exclusively in owning a thirty percent (30%) interest in a proposed coal-fired electric generating facility consisting of two electric generating units, each with a net rating of approximately 300,000 kilowatts to be located in the People's Republic of China and to engage in project development activities with respect thereto.

Comment date: October 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Company

[Docket No. EL96–1–000]

Penntech Papers, Inc.

[Docket No. QF86–722–003]

Take notice that on October 2, 1995, Niagara Mohawk Power Company (Niagara Mohawk), filed a petition for declaratory order requesting the Commission to revoke the qualifying status of a cogeneration facility operated by Penntech Papers, Inc. (Penntech). Niagara Mohawk states that Penntech does not satisfy the ownership criteria for qualifying facility status because it has resold power it purchased from another utility.

Comment date: Thirty days after publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER95–1378–000]

Take notice that on September 13, 1995, a Montaup Electric Company (Montaup) a) filed a letter agreement with its nonaffiliated contract demand customers resolving issues raised in their protest and this docket and in accordance with the letter agreement, b) requested that its filing in this docket be treated as withdrawn insofar as it applies to service to those customers, and c) filed as Appendix B revisions to the Purchased Capacity Adjustment Clause in its rate schedules which are necessary in order to implement the letter agreement. The letter agreement provides that the nonaffiliated customers will withdraw their objections to the original filing once the present filing is accepted without change or condition.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas & Electric Company

[Docket No. ER95–1759–000]

Take notice that on October 2, 1995, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER95–1776–000]

Take notice that on September 18, 1995, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas & Electric Company

[Docket No. ER95–1777–000]

Take notice that on October 2, 1995, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1819–000]

Take notice that on September 21, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an application pursuant to Section 202(e) of the Federal Power Act, to transmit electric energy to a foreign country. The requested authority would enable Con Edison to sell surplus electric energy and capacity to Hydro-Quebec (HQ), a Canadian corporation, pursuant to a September 14, 1995, Agreement between Con Edison and HQ (the Agreement). The Agreement provides that Con Edison and HQ can purchase, sell, or exchange surplus energy and capacity from and with each other whenever it was economical for both parties to enter into such a transaction.

Con Edison states that a copy of this filing has been served by mail upon HQ.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER95–1820–000]

Take notice that on September 22, 1995, Southern Company Services, Inc. (''SCS''), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed a Service Agreement dated as of August 23, 1994 between Heartland Energy Services and SCS, as agent for Southern Companies, for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER95–1832–000]

Take notice that Public Service Electric and Gas Company (PE&G) of Newark, New Jersey on September 26, 1995, tendered for filing an agreement for the sale of energy and capacity to Citizens Lehman Power Sales (Citizens).

PE&G requests the Commission to waive its notice requirement to permit the Energy Sales Agreement to become effective as of September 28, 1995. Copies of the filing have been served upon Citizens.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER95–1833–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on September 26, 1995, tendered for filing an agreement

for the sale of energy and capacity to Louis Dreyfus Electric Power Inc. (LDEP).

PSE&G requests the Commission to waive its notice requirement to permit the Energy Sales Agreement to become effective as of September 28, 1995. Copies of the filing have been served upon LDEP.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER95–1834–000]

Take notice that on September 26, 1995, New England Power Company (NEP) filed a Letter Agreement between Littleville Power Company and NEP for the installation and ownership of new metering equipment at the Glendale Hydro Facility in Stockbridge, Massachusetts. NEP requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 27, 1995.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER95–1835–000]

Take notice that on September 26, 1995, New England Power Company (NEP) filed a Letter Agreement between Commonwealth Electric Company and NEP, under which NEP agreed to perform software changes on the RAPR telemetering equipment at the Lowell Cogeneration Facility in Lowell, Massachusetts. NEP requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 27, 1995.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER95–1837–000]

Take notice that on September 27, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a change to PG&E Rate Schedules FERC No. 116 with the Modesto Irrigation District (MID) and FERC No. 115 with the Turlock Irrigation District (TID), collectively referred to as Districts. The rate schedule change is a Cost Reimbursement Agreement through which PG&E will be paid for the costs of modifying certain of its substation and general office facilities to accommodate the Districts' construction and interconnection of the new Westley-Tracy Transmission Project. The Cost Reimbursement Agreement proposes no rates services beyond a one-time charge.

Copies of this filing have been served upon MID, TID and the California Public Utilities Commission.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER95–1838–000]

Take notice that PacifiCorp, on September 27, 1995, tendered for filing a Marketing Capacity and Storage Agreement dated September 1, 1995 (Agreement) between PacifiCorp and Black Hills Corporation (Black Hills).

PacifiCorp requests an effective date of December 1, 1995 be assigned to the Agreement.

Copies of this filing were supplied to Black Hills, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER95–1843–000]

Take notice that on September 27, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Northern Indiana Public Service Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of September 1, 1995.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power and Light Company

[Docket No. ER95–1844–000]

Take notice that on September 27, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Central Illinois Light Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of September 1, 1995.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Old Dominion Electric

[Docket No. ES96–1–000]

Take notice that on October 5, 1995, Old Dominion Electric Cooperative (Old Dominion) filed an application under § 204 of the Federal Power Act (FPA) seeking (1) authorization to enter into a proposed tax advantaged lease and leaseback of its Clover Power Station unit 1 and certain common facilities (Facility) and (2) an exemption from the Commission's competitive bidding and negotiated placement regulations. The transaction would involve a lease and lease-back of Old Dominion's 50 percent undivided ownership interest in the Facility under which an investor would obtain ownership of the undivided interest for income tax purposes and Old Dominion would obtain the effects of certain tax benefits that it would not otherwise be able to obtain. There would be no transfer of legal title to the Facility.

Old Dominion states that the Commission should assert jurisdiction over the proposed transaction based on the obligations to be assumed by it, citing a number of precedent cases decided by the Commission. Alternatively, Old Dominion consents to the Commission's review of the proposed transaction under § 204 of the FPA.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25813 Filed 10–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–11–000]

Citrus Energy Services, Inc.; Notice of Petition for Declaratory Order

October 12, 1995.

Take notice that on October 5, 1995, Citrus Energy Services, Inc. (Citrus Energy), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed

in Docket No. CP96–11–000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order that certain pipeline and measuring facilities with appurtenances, to be abandoned by spin-off to Citrus Energy by Florida Gas Transmission Company (FGT), would be gathering facilities, upon the acquisition by Citrus Energy, and therefore would be exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act.

Citrus Energy states that the facilities consists of approximately 289.31 miles of various (2-inch to 20-inch) diameter lines, along with measuring and other appurtenant facilities such as communication equipment, measuring equipment, valves and other miscellaneous facilities or appurtenances attached to the laterals. Citrus Energy states further that Citrus Energy's petition is the companion to the application filed by FGT on October 5, 1995 and now pending in Docket No. CP96–12–000, to abandon the subject facilities.

It is stated that the facilities are located in Hidalgo, Starr, Brooks, Kenedy, Kleberg and Nueces Counties, Texas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 2, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25771 Filed 10–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–12–000]

Florida Gas Transmission Company; Notice of Application

October 12, 1995.

Take notice that on October 5, 1995, Florida Gas Transmission Company (FGT), P.O. Box 1188 Houston, Texas 77251–1188, filed in Docket No. CP96–12–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by spinning down to Citrus Energy Services, Inc. (Citrus Energy) certain pipeline and measuring facilities with appurtenances, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that the facilities consists of approximately 289.31 miles of various (2-inch to 20-inch) diameter lines, along with measuring and other appurtenant facilities such as communication equipment, measuring equipment, valves and other miscellaneous facilities or appurtenances attached to the laterals.

FGT states further that the facilities are located in Hidalgo, Starr, Brooks, Kenedy, Kleberg and Nueces Counties, Texas.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before November 2, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 FGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25772 Filed 10–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–9–000]

Shell Gas Pipeline Company; Notice of Petition for Declaratory Order

October 12, 1995.

Take notice that on October 4, 1995, Shell Gas Pipeline Company (Shell) filed a petition for declaratory order with the Commission in Docket No. CP96–9–000 requesting that the Commission declare certain gathering facilities, Shell proposes to construct and operate in the Mississippi Canyon area, offshore Louisiana, as non-jurisdictional gathering facilities exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the application which is open to the public for inspection.

Shell proposes to construct and operate its Mississippi Canyon Gathering System (MCGS) in three segments: (1) 68 miles of 12-inch diameter pipe from the sub-sea wellheads located on its Mensa Prospect in Mississippi Canyon Block 731 to a platform in West Delta Block 143, offshore Louisiana (WD 143 Platform); (2) 45 miles of 14-inch diameter pipe from the Mars Prospect in Mississippi Canyon Block 807, offshore Louisiana, to the WD 143 Platform; and (3) 45 miles of 30-inch diameter pipe from the WD 143 Platform to the existing processing and interstate pipeline infrastructure at the Venice Processing Plant in Venice, Plaquemines Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 2, 1995, 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 NGA (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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25770 Filed 10–17–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140239; FRL–4983–7]

Access to Confidential Business Information by Illinois Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, the State of Illinois Environmental Protection Agency, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TCSA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0039, the State of Illinois Environmental Protection Agency will review information directed to EPA under the authority of TSCA, including CBI, and determine the value of such information to its toxics programs. This contractor will produce a paper containing a summary of its findings to be directed to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0039, the identified contractor will require access to information, including CBI, submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the State/contractor toxics facility headquarters located at 2200 Churchill Road, Springfield, Illinois 62794.

The contractor will be required to adhere to a modified version of the security provisions included in the EPA *TSCA Confidential Business Information Security Manual.* These modified provisions do not substantively reduce the level of security afforded TSCA CBI. Copies of the modified version are available from the address referenced above in FOR FURTHER INFORMATION CONTACT. Additional information may be secured from Scott Sherlock, EPA staffer assigned to this project at (202) 260–1536; e-mail: sherlock.scott@epamail.epa.gov.

Before access to TSCA CBI will be authorized at the contractor's site, EPA is required to approve the contractor's security certification statement, perform the required inspection of the facility, and ensure that the facilities are in compliance with the modified security provisions. Upon completing review of the CBI materials, the State/contractor will return all these materials to EPA.

Clearance for access to TSCA CBI under this contract may continue 60 days after the date of commencement, unless EPA agrees to extend it, in which case clearance will be extended to 120 days after the date of commencement.

All contractor personnel having access to TSCA CBI will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Additionally, the contractor has provided assurances in writing that the TSCA CBI protections required under this contract are not inconsistent with any existing State provisions.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: October 12, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–25843 Filed 10–17–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140240; FRL–4983–9]

Access to Confidential Business Information by the Wisconsin Department of Natural Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, the Wisconsin Department of Natural Resources, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TCSA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0037, the Wisconsin Department of Natural Resources will review information directed to EPA under the authority of TSCA, including CBI, and determine the value of such information to its toxics programs. This contractor will produce a paper containing a summary of its findings to be directed to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0037, the identified contractor will require access to information, including CBI, submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the State/contractor toxics facility headquarters located at 101 South Webster St., Madison, Wisconsin 53707.

The contractor will be required to adhere to a modified version of the security provisions included in the EPA *TSCA Confidential Business Information Security Manual.* These modified provisions do not substantively reduce the level of security afforded TSCA CBI. Copies of the modified version are available from the address referenced above in FOR FURTHER INFORMATION CONTACT. Additional information may be secured from Scott Sherlock, EPA staffer assigned to this project at (202) 260–1536; e-mail: sherlock.scott@epamail.epa.gov.

Before access to TSCA CBI will be authorized at the contractor's site, EPA is required to approve the contractor's

security certification statement, perform the required inspection of the facility, and ensure that the facilities are in compliance with the modified security provisions. Upon completing review of the CBI materials, the State/contractor will return all these materials to EPA.

Clearance for access to TSCA CBI under this contract may continue 60 days after the date of commencement, unless EPA agrees to extend it, in which case clearance will be extended to 120 days after the date of commencement.

All contractor personnel having access to TSCA CBI will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Additionally, the contractor has provided assurances in writing that the TSCA CBI protections required under this contract are not inconsistent with any existing State provisions.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: October 12, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–25842 Filed 10–17–95; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5314–2]

Draft Compliance Application Guidance (CAG) Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act, Public Law 102–579, EPA has issued proposed criteria for certifying whether the Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) is in compliance with EPA's radioactive waste disposal standards set forth at 40 CFR part 191 (''Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes''). See 60 FR 5766 (Jan. 30, 1995) (proposed compliance criteria). The EPA is developing a WIPP compliance application guidance document that is intended to be a companion to and based upon the WIPP compliance criteria. The EPA is hereby announcing that a draft WIPP compliance application guidance document is available for public comment. The draft guidance document summarizes and, in some instances, provides non-binding interpretations of the proposed WIPP compliance criteria published on January 30, 1995. The EPA will fully consider timely public comments in developing and revising the guidance document.

DATES: Comments in response to today's notice must be received by December 18, 1995.

ADDRESSES: Copies of the draft compliance application guidance document are available to the public at EPA Docket No. A–93–02 (Category II–B) maintained at the following addresses: (1) Room 1500 (first floor in the Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, Air Docket, 401 M Street, S.W., Washington, D.C. 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe, located at 1600 St. Michaels Drive, Santa Fe, New Mexico (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday and 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials.

Comments on the draft compliance application guidance document should be submitted, in duplicate, to: Docket No. A–93–02 (Category II–D), U.S. Environmental Protection Agency, Air Docket, Room M–1500 (LE–131), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Tom Peake, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202) 233–9310.

SUPPLEMENTARY INFORMATION: The Department of Energy is proposing to use the Waste Isolation Pilot Plant (WIPP), located in Eddy County, New Mexico, as a deep geologic repository for the disposal of transuranic radioactive waste generated by nuclear defense activities. The 1992 Waste Isolation Pilot Plant Land Withdrawal Act, (Pub. L. 102–579), calls for the EPA to perform several regulatory activities for the WIPP including: (1) issuing radioactive waste disposal standards; (2) establishing criteria for the EPA to determine whether the WIPP complies with the radioactive waste disposal standards; and (3) certifying whether the DOE's WIPP facility complies with the disposal standards, based on a DOE submitted compliance certification application. *See* section 8 of the WIPP Land Withdrawal Act. The WIPP Land Withdrawal Act prohibits the DOE from commencing with the emplacement of transuranic waste for underground disposal at the WIPP until the EPA certifies that the facility will comply with EPA's radioactive waste disposal standards. See section 7(b) of the WIPP Land Withdrawal Act.

The EPA has issued final radioactive waste disposal standards, which are codified at 40 CFR part 191. See 58 FR 66398 (Dec. 20, 1993). The EPA has also proposed criteria, to be codified at 40 CFR part 194, for certifying whether the WIPP facility will comply with EPA's radioactive waste disposal standards. See 60 FR 5766 (Jan. 30, 1995) ''Criteria for Certification and Determination of the Waste Isolation Pilot Plant's Compliance with Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes.''. EPA recently announced that it was reopening the public comment period on the proposed compliance criteria. See 60 FR 39131 (August 1, 1995). The public is referred to the December 20, 1993 and January 30, 1995 Federal Register notices for more detailed information about the EPA's regulatory activities at the WIPP.

The compliance application guidance (CAG), the subject of this notice, is a guidance document for the proposed rule 40 CFR part 194. The proposed compliance criteria provide that EPA's evaluation for certifying, by rule, whether WIPP is in compliance with the radioactive waste disposal standards will be initiated after EPA determines that DOE has submitted a complete compliance certification application. See, *e.g.*, 60 FR 5784–85. The draft CAG summarizes and interprets the proposed criteria related to the contents of the compliance certification application and, when revised, is intended to guide EPA's assessment of whether the DOE compliance application is complete.

By this notice, the EPA is inviting the public to participate in the development of the CAG, available in draft at the

public dockets identified above, by submitting written comments for EPA's consideration. EPA requests public comments on all aspects of the draft CAG. In particular, EPA requests the public's views on the following questions: (1) Does the draft CAG clearly describe EPA's expectations of a complete application? (2) Are there areas where you believe the CAG may exceed the requirements of the proposed 40 CFR part 194? Please provide examples. (3) How can the guidance be improved? Please provide examples.

The draft CAG is based upon the proposed compliance criteria. The CAG, as revised, will not establish new compliance criteria or standards and will not establish binding rights or duties but will be a non-binding guide for EPA's completeness assessment. This notice is not inviting comments on the proposed compliance criteria. The request for public comments is limited to the contents of the draft CAG and its consistency with the proposed compliance criteria.

The draft CAG will be revised and made available to the public after the final compliance criteria are issued. Because it is a non-binding, interpretive document, the CAG is not subject to the notice-and-comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. Thus, EPA does not plan to provide written responses to the public comments submitted. Nevertheless, EPA will fully consider public comments in developing the revised CAG and will make any revisions necessary to reflect modifications to the final compliance criteria.

As noted, the CAG will guide EPA's assessment of whether DOE's compliance certification application is complete. Subsequently, EPA will determine, by rule, whether the WIPP facility is in compliance with the EPA's radioactive waste disposal standards. See section 8(d) of the WIPP Land Withdrawal Act. EPA's certification decision will be made only after EPA reviews DOE's compliance certification application based on the final compliance criteria, and conducts a WIPP certification proceeding in accordance with the Administrative Procedure Act rulemaking requirements at 5 U.S.C. 553. Thus, before the Administrator of EPA makes any final WIPP certification decision, EPA will issue a proposed decision in the Federal Register and provide an opportunity for public comment on the proposal. The subsequent final certification decision by the Administrator will consider the comments received in response to the proposal and be accompanied with a reply to significant public comments.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 95–25774 Filed 10–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, November 2, 1995. The meeting, held pursuant to 15 USC 1691(b) and 12 CFR 267.5, will take place in Terrace Room E of the Martin Building. The meeting, which will be open to public observation, is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on issues related to agency examinations of institutions' compliance with the new regulations under the Community Reinvestment Act.

Consumer Leasing Disclosures. Discussion led by the Consumer Credit Committee on

(1) proposed amendments to the Board's Regulation M (Consumer Leasing) and

(2) suggestions for actions that could further assist consumers in understanding lease transactions and effectively using lease disclosures as shopping tools.

Truth in Lending Act Amendments of 1995. Discussion led by the Consumer Credit Committee

(1) on recent amendments to the Truth in Lending Act, focusing on whether it is feasible to disclose in the TILA finance charge all charges imposed by creditors as an incident to an extension of credit, including charges currently excluded; and

(2) on whether creditors engage in abusive refinancing practices to avoid the consumer's right of rescission.

Regulatory Coverage for Stored-Value Cards. Discussion led by the Depository and Delivery Systems Committee on whether and how the Board should amend Regulation E (Electronic Fund Transfers) to govern technologically advanced electronic products, such as smart cards, prepaid cards, and electronic purses.

Impact of Technology on Consumer Banking. Presentation by the Depository and Delivery Systems Committee on electronic technologies being introduced in the banking area and possible changes in the ways in which consumers will conduct their banking business as a result.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Committee Reports. Reports from Council committees on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Wednesday, October 25, 1995, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ann Marie Bray, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, October 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–25777 Filed 10–17–95; 8:45am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Request for Public Comment in Preparation for Public Workshop Regarding ''Made in USA'' Claims in Product Advertising and Labeling

AGENCY: Federal Trade Commission.

ACTION: Request for public comment in preparation for proposed Federal Trade Commission workshop on the use of ''Made in USA'' claims in product advertising and labeling.

SUMMARY: On July 11, 1995, the Federal Trade Commission announced that it will conduct a comprehensive review of consumers' perceptions of ''Made in USA'' claims in product advertising and labeling. As part of this review, the Commission will invite representatives of consumers, industry, government agencies, and other groups to attend a public workshop to exchange views on the issues. Among other things, the Commission will be determining (i) whether it should alter its legal standard regarding the use of unqualified ''Made in USA'' claims, and (ii) how domestic content should be measured under any future standard.

The Commission plans to hold the workshop in Washington, D.C., in February or March 1996, and has undertaken a consumer perception study for use in that workshop. Today's notice seeks written comment on the issues that will be addressed at the workshop.

The Commission will consider comments of all persons, including non-participants in the workshop. However, any person who expects to apply for participation in the workshop must file a written comment at this time. The Commission will issue a second Federal Register notice setting the date and specific location of the workshop and requesting applications for participation, once a projected finish date for the study is established.

DATES: Written comments must be submitted on or before January 16, 1996.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Submissions should be captioned: ''Made in USA Policy Comment,'' FTC File No. P894219.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202–326–2823.

SUPPLEMENTARY INFORMATION:

Introduction

The Commission is directed to prevent ''unfair or deceptive acts and practices'' under section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45. A deceptive act or practice is one that is likely to mislead consumers acting reasonably under the circumstances.[1] It is under this general authority to prevent deceptive acts or practices that the Commission addresses ''Made in USA''[2] claims in product advertising and labeling.

FTC deception law does not require manufacturers to disclose the degree of domestic content in their products.[3] If manufacturers choose to advertise the domestic origin or content of their products, however, the claims must be truthful and substantiated. Thus, FTC law prohibits sellers from making affirmative claims that exaggerate the domestic content of their products. As a result, manufacturers whose products are not entirely domestic and who claim their products are Made in USA may be required to qualify the Made in USA claims. An example of a qualified claim would be ''Made in USA of foreign and domestic components.''

Historically, the Commission has treated unqualified Made in USA claims as implying that products are ''wholly of domestic origin.''[4] In recent years, the Commission also has taken action against firms that allegedly deceived consumers by concealing the fact that their goods were manufactured in foreign countries.[5] Over the last few decades, however, the Commission has not, until recently, brought enforcement actions against those making Made in USA claims for products assembled in the United States. Nonetheless, older Commission cases and advisory opinions clearly required these products also be wholly domestic in origin.[6]

On September 20, 1994, the Commission published for comment a consent agreement subject to final approval in *Hyde Athletic Industries, Inc.* (F.T.C. File No. 922–3236).[7] On the same day, the Commission issued a complaint in *New Balance Athletic Shoe, Inc.* (F.T.C. Docket No. 9268).[8] In both matters, the proposed complaint alleged that the sellers represented that their goods are ''made in the United States, *i.e.*, that all, or virtually all, of the component parts of the [goods] are made in the United States, and that all, or virtually all, of the labor in assembling the [goods] is performed in the United States.'' The representations were alleged to be false because (1) a substantial portion of the firms' product lines was assembled overseas of foreign parts, and (2) a substantial portion of the products assembled in the U.S. was composed of foreign components. In its announcement of the *Hyde* consent agreement, the Commission noted that its decision was based in part on ''extrinsic evidence obtained by the Commission regarding consumer perceptions of 'Made in USA' claims,'' and invited commenters to submit their own consumer perception evidence.[9]

Over 150 commenters responded to this request for comment. Many commenters objected to the ''all or virtually all'' standard as being too stringent. Commenters argued that, with increased globalization of production, most consumers today do not assume that ''Made in USA'' products contain ''all or virtually all'' U.S. parts and labor. Commenters also argued, among other things, that the Commission's standard was inconsistent with other government standards (*e.g.*, U.S. Customs Service requirements), could not be met by many sellers today, and would make it difficult for sellers to promote the use of United States labor in products.

Recognizing the public interest in these issues, the Commission on July 11, 1995 announced it would conduct a comprehensive review of consumers' perceptions of Made in USA advertising claims. The Commission also announced it would hold a public workshop to allow a variety of interested parties to exchange views on relevant issues.[10]

Commission staff are conducting a research project to help determine how consumers currently view Made in USA and related claims. The Commission will place the results on the public record for use by workshop participants and the general public. Once the project is sufficiently advanced to allow a prediction of its completion date, the Commission will announce the date, specific location, and details of the workshop in a new Federal Register notice. At that time, the Commission also will solicit applications for participation in the workshop. No applications should be submitted except in response to that later notice. Notwithstanding the later date for applications, interested parties must submit written comments in response to today's Federal Register notice in order to participate in the workshop.

A summary of the subjects on which the FTC is soliciting comments appears in Part V of this notice. As discussed further in Part V, all written comments, including those from non-participants, will be made available to the public, both through the FTC's Public Reference Room and over the Internet, and will be

considered by the Commission in formulating its future policy regarding Made in USA claims.

The issues on which the Commission desires comment are as follows.

I. Consumer Perception of Made in USA Claims and the New Global Economy

A. Direct Evidence of Consumer Perception

A primary objective of the Commission's consumer protection mission is to enhance consumer choice. In exercising its authority to prohibit deceptive acts or practices, the Commission seeks to ensure that consumers can choose products on the basis of accurate information.[11] This policy applies to claims regarding the country of origin of products.

In determining whether a representation is deceptive, the Commission first must determine what that representation (whether in an advertisement or a label) expressly states or implies to consumers. Claims may be made expressly, through direct representations, or they may be implied. With respect to implied claims, the Commission often is able to conclude that an advertisement (or label) contains an implied claim by evaluating the content of the ad and the circumstances surrounding it. When the Commission cannot do so, the Commission will not find the advertisement to have made an implied claim unless extrinsic evidence allows it to conclude that such a reading of the advertisement is reasonable. Such evidence can include such sources as reliable results from methodologically sound consumer surveys, evidence respecting the common usage of terms, generally accepted principles drawn from market research, and expert opinion.[12]

Whether an unqualified Made in USA claim means ''all or virtually all'' domestic content or some lesser proportion depends on the implied message in the advertisement or label. Thus, direct or extrinsic evidence of how consumers view Made in USA claims can contribute significantly to the Commission's analysis.

The Commission already possesses some extrinsic evidence regarding Made in USA claims. In 1991, the Commission performed a consumer perception study that asked consumers general questions about Made in USA claims, as well as questions about the use of such claims in specific advertisements. The results of that study suggest that many consumers view ''Made in USA'' claims as representing that products possess high domestic content. For example, approximately 77% of the consumers stated that, in general, Made in USA references mean ''all or nearly all'' parts and labor are domestic.[13]

The Commission placed this consumer perception study on the public record on July 11, 1995, and now invites comment on the study. The Commission also invites the public to submit any other direct evidence of consumer perception of Made in USA claims for placement on the record and discussion at the workshop.

B. The Impact of Increased Globalization of Production on Consumer Perception

Some commenters in *Hyde* offered circumstantial evidence in support of a more lenient standard for Made in USA claims. They noted that the world economy has changed significantly since the Commission's standard was first adopted. Consumers now recognize that many products are no longer made wholly in the United States. Thus, it was argued, many consumers no longer believe that a Made in USA claim means the product is ''all or virtually all'' domestic in origin.

The Commission recognizes that substantial changes in the domestic production of goods have occurred since the time that the Commission's first Made in USA cases were brought. For many products, the globalization of production is so advanced that it is difficult to identify any one unique country of origin for the product. There also is little question that some consumers are aware that many goods assembled here have foreign parts.

In the workshop, an important issue will be how this increased awareness of foreign sourcing affects consumer perceptions when consumers are confronted with specific Made in USA claims in advertising or product labeling. On the one hand, it may be that consumers today more readily ''discount'' or take alternative meanings from unqualified Made in USA claims. For example, there may be product categories where consumers know through the media that most product parts come from other countries. At the same time, there is reason to question whether consumers now view Made in USA claims differently than in the past. Consumers may have a generalized knowledge of product origin, but not enough information about specific brands to assess a particular seller's country-of-origin claims.[14] In addition, to the extent that consumers are generally aware of increased foreign manufacture, this may, in some circumstances, actually strengthen the appeal of a Made in USA claim. An aggressive Made in USA claim for a product of a kind known typically to be made abroad may suggest to consumers not only that the advertised product is domestically manufactured, but that it is unusual in this respect.[15]

The Commission invites commenters to submit any circumstantial evidence or other arguments addressing how consumers currently view Made in USA claims. In particular, the Commission is interested in how the following factors might affect such perceptions: (1) The type or complexity of the product; (2) general consumer knowledge of the foreign sourcing for the type of product; (3) the frequency or prominence of the claim (*e.g.*, an aggressive advertising campaign versus an inconspicuous claim); and (4) the presence of express or implied claims that the seller is superior or unique with respect to the domestic content of its product.

II. The Costs and Benefits of an ''All or Virtually All'' Standard Compared to Other Standards

A. Impact on Domestic Commerce

Some commenters in *Hyde* contended that the ''all or virtually all'' standard set forth initially in the proposed *Hyde* consent agreement is unattainable and deprives manufacturers of a selling tool that could help preserve American jobs. Many of these commenters argued that few sellers today have products with high domestic content. One solution offered by such commenters was for the Commission to permit Made in USA claims when the products are made with at least 50% domestic parts and labor.

Firms that wish to retain or increase American labor content in the face of possibly lower foreign labor costs may need an effective advertising message to compete. ''Made in America'' and similar phrases have a cachet and simplicity that may make them effective tools in advertising and product labeling. However, a much smaller percentage of products assembled in the United States today is comprised of all or virtually all U.S. parts and labor, compared to previous decades, and this trend is likely to continue.

At the same time, there is reason for caution in adopting a substantially lower threshold of domestic content for Made in USA claims. A lower threshold could permit deceptive claims if consumers still believe that Made in USA claims imply high domestic content.[16] In this regard, the Commission seeks comment on the relative costs and benefits of an ''all or virtually all'' standard and a lower threshold, such as 50%.

Implicit in the above arguments for a lower domestic content standard is the assumption that sellers of products with relatively high domestic content cannot tout this advantage with qualified claims, because it is impractical to convey such qualifications or because they lack commercial appeal. Accordingly, the Commission also invites comment on the costs and benefits to business of using qualified, rather than unqualified, Made in USA claims. Commission doctrine permits sellers to make truthful and nonmisleading claims concerning the amount of domestic content in their products, in both absolute and comparative terms. The Commission requests comment on whether and to what extent qualified Made in USA claims—*e.g.*, ''Made in USA of domestic and imported parts,'' ''Made in USA with at least 70% U.S. parts and labor,'' or ''The most U.S. content of any leading brand''—unduly burden an advertiser's domestic content message. The Commission also requests comment on the practical considerations in using qualified claims, including the problem of space limitations. In particular, do even relatively short qualifications—*e.g.*, ''80% US parts''—present practical problems in fashioning advertisements or labels, and would such problems inhibit the use of domestic content claims?[17]

In addition, the Commission seeks comment on specific domestic origin phrases or messages that might adequately convey the amount or presence of foreign content in products, yet address practical concerns. For example, one alternative claim that has been suggested is ''Assembled in USA.'' The Commission is interested in receiving information as to what meaning consumers take from this phrase and whether use of the term would avoid undue inferences of domestic content.[18]

B. Impact on International Trade

Some commenters in *Hyde* have suggested that strict FTC standards for unqualified Made in USA claims could lead to conflicting requirements (and thus manufacturing inefficiencies) for U.S. companies that sell their goods both here and abroad. For example, some commenters claimed that foreign customs officials permit (or even require) simple Made in USA labels in circumstances where the FTC would require qualified claims. Where such labels are permanently affixed to or incorporated in the item, the manufacturer may have to run separate production runs for the same product, one for foreign sales (''Made in USA'') and one for domestic sales (''Made in USA from foreign and domestic parts'').

In this regard, the Commission invites comment on consumers' and businesses' experience with foreign customs laws and practices with respect to qualified Made in USA claims. The Commission also wishes to explore alternatives for granting sellers the flexibility to comply with both FTC law and foreign customs, while avoiding deceptive labeling practices. One possible option would be to permit sellers to place unqualified labels on products (*e.g.*, ''USA'') to be shipped to both foreign markets and within the United States, as long as sellers disclose foreign content to U.S. consumers by other means, such as packaging or hangtags.[19]

C. The Costs and Benefits of Adopting the Country-of-Origin Rules of Other U.S. Government Agencies

U.S. Customs Service. The Tariff Act requires, specifically for purposes of quotas and duties, that products entering the United States bear ''the English name of the country of origin of the article,'' and that *one foreign country* be designated as the country of origin.[20] Generally speaking, Customs law requires a foreign origin marking on the imported article unless the imported item will be ''substantially transformed'' in the United States.[21] Although Customs law imposes no requirements regarding the disclosure of *domestic* content and therefore does not address preconditions for Made in USA claims,[22] some commenters in *Hyde* urged the Commission to apply the substantial transformation test to Made in USA claims.[23]

The latter approach would have the benefit of applying one set of rules to both claims of domestic origin and claims of foreign origin. However, the substantial transformation test is principally aimed at determining a country of origin for purposes of tariffs and quotas, not anticipating the degree of domestic content that consumers would attach to affirmative Made in USA claims. Products substantially transformed in the United States could still contain higher foreign content than consumers might be led to believe by affirmative Made in USA labels or advertisements.

Other Laws and Regulations. Other statutes and regulations involve country-of-origin determinations as well. For example, the Buy American Act requires that federal agencies purchase only such products as were mined or produced in the United States, or are at least 50% domestic in value.[24] However, the law does not deal with advertising or labeling, and its definition does not appear to be tailored to consumer perception of Made in USA claims. Another example of a law involving country-of-origin determinations is the American Automobile Labeling Act,[25] which requires that each automobile manufactured on or after October 1, 1994 for sale in the United States bear a label disclosing, among other things, where the car was assembled, the percentage of equipment which originated in the United States and Canada, the country of origin of the engine, and the country of origin of the transmission. The Commission invites comment on whether, and in what respect, any aspect of these laws or other laws are relevant to the development of the Commission's Made in USA advertising and labeling policy.

III. Issues Regarding the Computation of Domestic Content

The Commission's advertising substantiation doctrine requires that any objective claim be supported by a ''reasonable basis'' [26]—commonly defined in Commission orders as ''competent and reliable evidence'' that substantiates the representation.[27] Thus, whatever threshold for domestic content is adopted, an advertiser making a Made in USA claim must have substantiation that its product in fact meets that threshold.

Some commenters in the *Hyde* matter, however, stated that the Commission's current standard gives little guidance as to how domestic content is to be computed. Commission staff also routinely receive inquiries on this subject from consumers and businesses seeking guidance. Therefore, the Commission solicits comment on alternative methods of calculating domestic content.

A. A Proposed Formula for Measuring Domestic Content

In defining the appropriate method of measuring domestic content, whether the threshold for Made in USA claims is ''all or virtually all'' or some lesser proportion, several approaches are possible. For example, it might be possible to measure the proportion of labor hours, proportion of total labor cost (wages), or to impose separate requirements for minimum labor and minimum parts costs.

For discussion purposes, one possible formula for computing domestic content is as follows:

Before making Made in USA claims, sellers must demonstrate that their products contain X percent domestic content. This percentage shall be computed by (i) dividing DOMESTIC CONTENT (purchase cost [28] of U.S. parts +

cost of U.S. labor and direct overhead in final assembly) by (ii) TOTAL PRODUCT COST.

The Commission invites comment on this formula, and any alternative approaches.

In addition, whatever approach is adopted, it is likely to require resolution of the following issues.

1. The ''Domestic Content'' Determination: Identifying ''U.S. Parts'' at the Component and Subcomponent Level

A central issue in calculating domestic content is determining how far back in the production process to search. May the seller simply determine the origin of product parts ''one step back'' in the production process? What if a large number of subcomponents within the supposedly U.S. parts are made in foreign countries?

Below, the Commission offers for discussion a number of options for measuring ''U.S. parts.'' The Commission requests comment on the reasonableness of each approach and any alternatives.

a. *Computation at All Stages of Production:* Under this approach, the manufacturer of the final product would need to find out from parts suppliers, or through other reliable evidence, where the component parts of the product were made and where the subcomponents of these parts were made. A seller who wished to make an unqualified Made in USA claim would need to proceed with this inquiry as far back in the production process as necessary to determine whether the threshold for domestic content (whether 100%, 50%, or something else) was met.

Although this may appear a formidable task, the ease of applying this rule likely will depend on the type of product and the necessary threshold. Through experience, many manufacturers know the origin of the components and subcomponents in their products.[29] The simpler the product, the simpler the determination. The most difficult circumstance may be where the company manufactures a complex product with many tiers of production and it appears that the product is close to meeting the domestic content threshold. Manufacturers who frequently change from domestic to foreign parts suppliers also may find it difficult to make these determinations.[30]

b. ''*One or Two Steps Back*'': Another approach would be to require specific determination of the country of origin of all parts and subcomponents, but only one or two steps back in the production process. Under a one step back approach, for example, a lawn mower manufacturer would determine whether the basic parts in final assembly—*e.g.*, engine, wheels, platform, handle—were assembled in plants in the United States.[31] This approach may result in reasonable determinations of domestic content, if consumers only take Made in USA claims as meaning ''basic parts were made here.'' This approach is already used in the textile area.[32] In many circumstances, it may also have the advantage of ease of application—although some difficulties may arise in determining what constitutes a single ''step'' (or two ''steps'') back in the manufacturing process.[33]

If, however, consumers are concerned with the true proportion of labor or profit that can be attributed to U.S. workers and firms, then the approach of looking only ''one step back'' may open the door to misleading Made in USA claims. Automobiles (although separately regulated by the American Automobile Labeling Act) provide an obvious example. Examining only the basic parts put together in the final stage of assembly—*e.g.*, assembled engine, transmission, etc.—would mask enormous added foreign value in some instances. The same could be said of many complex products.

2. Adding ''Domestic Content'' at the Final Stage of Assembly

The cost of parts is not the only measure of domestic value. At final assembly, there is the addition of labor on the assembly line, packaging, and other direct costs of producing the particular item (*e.g.*, energy use).

One issue is whether domestic content can be further amplified by allocating any portion of general overhead to the manufacture of the product. Another issue is whether sellers can make Made in USA claims for products that have high domestic content, but do not undergo final assembly in the United States.[34] Such products may sufficiently contribute to U.S. wealth and labor creation to satisfy consumer expectations of Made in USA claims. However, consumers also may find it material whether final assembly took place in the United States.[35]

3. The Definition of ''Total Product Cost''

The final step in the formula is to divide the domestic content figure into ''total product cost.'' The latter obviously will be a higher figure than ''domestic cost'' when the product contains foreign components. On the simplest level, total product cost would be the total purchase price of foreign parts plus all the domestic costs added previously. However, the Commission invites comment on whether any additional elements should be added to the total cost of the product.

B. ''Reasonable Basis'': an Alternative Approach

Rather than, as suggested above, adopting a particular formula for calculating domestic content, one alternative would be simply to require that advertisers possess a ''reasonable basis'' for an express or implied claim that their products contain a proportion of domestic content, as required generally by the Commission's substantiation doctrine. Such an approach would permit advertisers greater flexibility in determining how to substantiate their claims, and might be less restrictive of truthful Made in USA claims. However, a ''reasonable basis'' standard, unelaborated upon, also provides less certain guidance to businesses and consumers. The Commission invites comment on the costs and benefits of utilizing a reasonable basis standard versus specifying a particular method for calculating domestic content.

IV. Form of Guidance

At the conclusion of the workshop, the Commission will have several options for giving guidance to the public on Made in USA claims. Possible options include, among others, case-by-case enforcement, an enforcement policy statement, interpretive guides, or a rulemaking under the Crime Bill. The Commission seeks comment on the form of guidance that would be most useful.

One question is whether it would be preferable for the Commission to state a general rule (*e.g.*, ''all or virtually all,'' ''substantial domestic content'') or a bright-line percentage threshold for Made in USA claims.[36] A related question is whether the Commission, were it to adopt a non-numeric rule, should also provide for safe harbors for firms whose products meet some minimum percentage threshold for domestic content. The Commission requests comment on the foregoing issues.

V. Information for Interested Persons

A. Invitation to Comment

Interested persons, including those who may wish to participate in the public workshop, are requested to submit written comments on any issue of fact, law or policy that may have bearing upon the Commission's policy on Made in USA claims. Although the Commission welcomes comments on any aspect of its policy regarding Made in USA claims, the Commission is particularly interested in comments on

the issues discussed above. Specifically, the Commission wishes comment on the following questions:

1. When consumers see product advertisements or labels stating or implying that products are ''Made in USA,'' ''Made in America,'' or the equivalent, what amount of U.S. parts and labor do they assume are in the products?

a. Are there surveys, copytests, or other direct evidence of consumer perception that will aid the analysis?

b. How has increased consumer knowledge of foreign imports or foreign components affected such perceptions? How much knowledge of foreign sourcing of components do consumers have?

c. How much, if at all, is consumer perception of Made in USA claims affected by the type of product, complexity of the product, or other factors?

d. Do consumers attach higher domestic content to products claimed to be Made in USA when the claims are presented with greater prominence or frequency? When they are featured in advertising, as opposed to merely on labels?

2. What are the costs and benefits of an ''all or virtually all'' threshold for Made in USA claims, versus a lower threshold (*e.g.*, 50%)?

a. What are the precise benefits of being able to make unqualified Made in USA claims for lower domestic-content products? What impact would this have on firms that now meet the higher standard? On firms that might be able to raise their domestic content to meet a lowered threshold?

b. What difficulties are there in making truthful comparative or qualified claims that reveal that the product is not wholly domestic? Is qualifying claims more difficult in this context than in other advertising or labeling contexts (*e.g.*, ''30% lower in fat than the leading brand'')? Do advertising and labeling pose the same considerations?

c. What are the costs and benefits of alternative thresholds (*e.g.*, 50%, 75%, products ''substantially transformed'' in the United States)?

d. What are the costs to consumers, when the actual domestic content in ''Made in USA'' products is lower than consumers are led to believe?

e. If adding qualifications to Made in USA claims sometimes is impractical or costly due to space limitations, are there alternative phrases that meet this concern and also adequately inform consumers of foreign content? Do such formulations as ''USA 80%,'' ''Made in USA (80%),'' or similar formulations satisfy these concerns?

f. What do consumers understand the phrase ''Assembled in USA'' to mean? Would consumers view such terms as ''Assembled in USA'' as suggesting that the product may have substantial foreign content? How much foreign content? What are the costs and benefits of allowing such a claim for a product where there is only minimal domestic assembly?

3. What are the costs and benefits of using the same tests for Made in USA claims as those imposed by U.S. Customs requirements (''substantial transformation''), the Buy America Act (50% cost), and other domestic content statutes or rules?

4. Do foreign customs officials prohibit the addition of qualifying phrases on Made in USA labels? If so, does the traditional FTC requirement that labels make disclosures of substantial foreign content add significant manufacturing costs where sellers wish to sell a single item in domestic and foreign markets? Would an option of stating qualifying disclosures only on packages, hangtags, etc. at time of sale in the U.S. market significantly reduce such costs?

5. How should the proportion of domestic content be measured with respect to Made in USA claims?

a. In determining the U.S. value added by parts and components, is it sufficient to determine the purchase cost of parts and components made in U.S. plants? Do other measures better measure the U.S. content from the consumer's perspective?

b. Should the determination of U.S. value added by parts and components exclude raw materials? If so, what should be the definition of raw materials?

c. What are the costs and benefits of requiring sellers to determine the source of all components and subcomponents before making Made in USA claims?

d. What are the costs and benefits of permitting Made in USA claims where the seller has determined that a sufficient percentage of parts and components ''one step back'' in the manufacturing process were made in U.S. plants? Two steps back? At some other stage in production?

e. What types of costs, other than direct labor costs, should be added to the domestic content measure at the stage of final assembly? Only direct overhead? If general overhead (*e.g.*, real estate taxes, administrative costs), how can the measure be defined to avoid sellers from artificially inflating the domestic content of products for this purpose?

f. Should the profit to the final U.S. assembler of the product be counted toward domestic content?

g. What are the costs and benefits of a case-by-case determination that requires sellers to have a ''reasonable basis'' for their Made in USA claims, rather than requiring a particular method of computing domestic content? Would this lesser certainty provide insufficient guidance or fail to deter misleading Made in USA claims?

6. What form of guidance should the Commission offer with respect to Made in USA claims?

a. Should the form of guidance be case-by-case enforcement, an enforcement policy statement, guides, or a rulemaking? Are there other forms of guidance that would be more useful or cost efficient?

b. Should the Commission offer a bright-line test whereby sellers can make Made in USA claims only if the product contains a specific percentage of domestic cost? If a non-numerical threshold for permitted claims is adopted, would it be helpful to establish safe harbors within that threshold to establish what types of claims always would be permitted?

The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments should, if possible, suggest specific alternatives to various proposals and include reasons and data that indicate why the alternatives would better serve the Commission's statutory mandate of protecting consumers against deception.

Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580.

In addition, the FTC will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Internet. To access this notice and the comments filed in response to this notice, access the World Wide Web at the following address: http://www.ftc.gov.

At this time, the FTC cannot receive comments made in response to this notice over the Internet.

B. Public Workshop

The Commission's staff will conduct a public workshop to afford Commission staff and interested parties an opportunity to discuss the foregoing issues and other relevant issues raised in the written comments.

As stated previously, the Commission is conducting a consumer research project regarding consumer perception of Made in USA claims. Although the Commission has commenced work on this project, it is not yet clear when the results will be available. However, the Commission's goal is to have the work finished in time so that the workshop could be held in Washington, D.C., in February or March 1996. The Commission will issue a new Federal Register notice announcing the date and specific location of the workshop once staff has a projected finish date for the study.

The Commission recognizes that interested parties may not be able to determine whether they can participate in the workshop until they are informed of the specific dates. Therefore, the Commission will not solicit applications for participation at this time. However, the Commission will only accept applications for participation from parties who also have submitted written comments in advance of the proceeding. Accordingly, any party who expects to submit an application for a workshop should submit a written comment in response to this Federal Register Notice.

The next Federal Register notice will describe the workshop in more detail. In general, the Commission expects to conduct the workshop as described below.

The intent of the workshop will not be to achieve a consensus of opinion among participants, or between participants and Commission staff, with respect to any issue raised in this proceeding. However, the Commission will consider the views and suggestions made during the workshop, in addition to any written comments, in formulating its future policy regarding Made in USA claims.

If the number of parties who request to participate in the workshop is so large that including all requesters would inhibit effective discussion among the participants, then Commission staff will select as the participants a limited number of parties to represent the interests of those who submit written comments. The selections will be made on the basis of the following criteria:

1. The party submits a written comment by January 16, 1996.

2. In response to the next Federal Register notice announcing the date of the workshop, the party notifies Commission staff of its interest and authorization to represent an affected interest by the workshop notification date.

3. The party's attendance would promote a balance of interests being represented at the conference.

4. The party's attendance would promote the consideration and discussion of the issues presented in the workshop.

5. The party has expertise in issues raised in the workshop.

6. The party adequately reflects the views of the affected interest(s) which it purports to represent.

7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).

8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

A neutral, third-party facilitator may be retained for the public workshop. Prior to the conference, the participants will be provided with copies of the written comments received in response to this Notice. The discussion during the workshop will be transcribed and the transcription will be placed on the public record.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission, Commissioner Starek dissenting.

Donald S. Clark,

Secretary.

Notes

1. *See Cliffdale Associates, Inc.*, 103 F.T.C. 110 (1984), reprinting as an appendix letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (''Deception Statement'').

Under settled Commission doctrine, claims are deemed deceptive if even a ''significant minority'' of consumers are misled. ''An interpretation may be reasonable even though it is not shared by a majority of consumers in the relevant class, or by particularly sophisticated consumers. A material practice that misleads a significant minority of reasonable consumers is deceptive.'' *Kraft, Inc.*, 114 F.T.C. 40, 122 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), *cert. denied* 113 S.Ct. 1254 (1993).

2. In this notice, ''Made in USA'' refers to any message in which the terms, text, phrases, images, or other depictions refer solely to the United States as the country of origin, without disclosing the extent or fact of foreign components or labor. ''Made in America,'' ''U.S.-Made,'' and ''All American'' are examples of equivalent terms. However, the proceeding also will address the circumstances under which other terms, *e.g.*, ''Assembled in USA,'' ''Crafted in the USA,'' etc. might convey the same message and therefore have to satisfy the same threshold of domestic content.

3. Some statutes require disclosure of domestic origin or domestic content. *See, e.g.*, Textile Products Identification Act, 15 U.S.C. 70; Wool Products Labeling Act, 15 U.S.C. 68 (both enforced by the FTC).

4. See, *e.g.*, *Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940). From the 1940's through the 1960's, Commission cases uniformly stated that such unqualified Made in USA claims implied that the product was wholly domestic. In addition, the Commission in the late 1960's and early 1970's issued numerous public advisory opinions stating that a manufacturer could claim that a product was Made in USA only if the product was comprised wholly of domestic parts and labor. *See Foreign Origin*, 3 Trade Reg. Rep. (CCH) ¶ 7551 (1988) (discussing FTC advisory opinions and cases on country-of-origin issues).

In a related line of cases, the Commission has also imposed a requirement that sellers affirmatively disclose foreign content, rather than remain silent, when the cost of the product is substantially (50 percent or more) foreign in origin and this failure to disclose would mislead consumers as to the product's origin. *See Manco Watch Strap Co.*, 60 F.T.C. 495 (1962). The Commission's different traditional threshold for Made in USA claims (requiring wholly domestic content, rather than 50%) is based on the fact that the seller, rather than remaining silent, has made an affirmative Made in USA claim suggesting high domestic content. By contrast, the seller's silence on origin may suggest a wider range of scenarios regarding foreign versus domestic content.

5. *See Nikki Fashions, Ltd.*, No. C–3404 (1992) and *Richard B. Pallack, Inc.*, No. C–3333 (1991)(alleged removal of foreign origin labels); *Manzella Productions, Inc.*, No. C–3503 (alleged substitution of Made in USA labels for foreign origin labels); *El Portal Luggage, Inc.*, No. C–3499 (alleged removal of foreign origin labels in store featuring prominent Made in USA signs).

6. In September 1994, Congress, citing instances where foreign-made goods were labeled as Made in USA, enacted a domestic origin labeling provision in section 320933 of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103–322, 108 Stat. 2135 (''Crime Bill''). Section 320933 sets no substantive standard for Made in USA labeling claims. Instead, the provision makes clear that such claims are to be consistent

with section 5 of the FTC Act, and that the Commission is free to alter its legal standard as circumstances warrant.

7. Commissioner Azcuenaga and Commissioner Owen dissenting.

8. Commissioner Azcuenaga dissenting. Because the *New Balance* matter is now the subject of an order to show cause proceeding, *see* discussion *infra* note 10, it would be inappropriate for the Commission to discuss the merits of the case in this notice.

9. 59 FR 48,892, 48,894 (1994).

10. On the same day, the Commission (Commissioner Starek dissenting) also voted to direct staff to renegotiate a revised consent agreement with *Hyde* to remove the ''all or virtually all'' allegation and corresponding consent agreement terms. In addition, the Commission (Commissioner Starek dissenting) stayed the administrative proceeding in *New Balance*, and required New Balance and FTC complaint counsel to show cause why the FTC's complaint and notice order should not be amended in similar fashion.

11. In addition, the Commission, in acting against deception, seeks to protect competition in the marketplace by ensuring that firms that promote their products truthfully are not subject to unfair competition from competitors who engage in deceptive advertising.

12. *See Kraft, Inc.*, 114 F.T.C. at 121–22.

13. The consumer perception study (the ''Smith-Corona test'') involved 400 participants. The specific advertisements shown consumers advertised Smith Corona typewriters and Huffy bicycles. The Smith Corona advertisement showed a typewriter with various claims in headlines and text, plus a relatively small ''Made in USA'' reference under a company logo in the right margin. The Huffy advertisement showed a picture of bicycles with price information and claims in the upper left corner, plus a small ''Huffy, Made in USA'' reference at the bottom.

With respect to the specific advertisements, 59% of the consumers viewing Huffy bicycle advertisements thought that ''Made in USA'' meant the bicycles contained over 90% U.S. parts and labor. For typewriters, 49% of respondents viewed the claim as meaning the product contained over 90% parts and labor. Consumers held this view despite the fact that bicycle and typewriter industries have experienced substantial foreign imports for many years, and that the Made in USA references in the advertisements were quite modest and made no express uniqueness or superiority claims regarding U.S. content.

Nonetheless, the study suggests that consumer perceptions are influenced by the nature of the claims and product. Whereas 77% of participants thought that Made in USA claims, in the abstract, implied that all or almost all the product was domestic in origin, somewhat fewer took a ''90% or more'' message from the specific advertisements—and here too there was some difference in perception between the two ads. With respect to the typewriter advertisement, participants explained the lower estimate of domestic content based on such factors as the Canadian company address on the advertisement and that ''most electronic parts [are] made abroad.''

14. Many consumers do not have ready access to any specific information on component sourcing. For example, participants in the Smith-Corona test who viewed ''control'' bicycle and typewriter advertisements that lacked any Made in USA references held widely differing views regarding the foreign content of these products. Ten percent of the participants stated the products were 100% domestic; 21% said they ''do not know;'' and 45% said that at least 50% parts and labor were provided by U.S. workers. Smith-Corona Test, Tables 10 and 12.

15. In determining what claim is made in an advertisement, the Commission looks to the overall, net impression of the ad rather than to any single element. *Stouffer Foods Corp.*, Docket No. 9250, (September 26, 1994) slip op. at 4; *Kraft*, 114 F.T.C. at 790. Thus, a prominent Made in USA claim in an ad that featured American flags and references to employing American workers might convey to consumers a stronger claim of domestic content than would an ad focused on other product features that contained an inconspicuous ''Made in USA'' in the corner.

16. It is unclear whether lowering the domestic content threshold would in fact create greater incentives for American job creation. Under a new lower standard (*e.g.*, 50% domestic), any producer now having higher domestic content would have the incentive to *lower* the American labor and parts content to that new level (assuming unqualified Made in USA claims are a distinct marketing advantage and foreign production costs are lower). At the same time, there could be offsetting effects. A new class of producers having relatively low domestic content might find it advantageous to increase domestic content just enough to reach the new threshold.

17. In this regard, the Commission notes that garment manufacturers appear to have successfully adapted to the similar requirements of the Textile Labeling Rule, 16 CFR 303.33, placing qualifications on one-inch or smaller tags. The Commission also observes that sellers have fashioned commercially appealing claims in comparative terms in other contexts (*e.g.*, ''50% lower in fat than the leading brand'').

18. In this regard, the Commission cautions that literally true statements at times can carry deceptive implications. *See Kraft v. FTC*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993). Thus, the Commission invites comment on whether, for example, an ''Assembled in USA'' advertising campaign might be deceptive where the product is made almost entirely of foreign components and there is minimal domestic assembly, and whether consumers assume that an ''Assembled in USA'' product contains a minimum amount of domestic labor or parts.

19. By analogy, FTC opinions have permitted *foreign* products themselves to remain *unlabeled* (*i.e.*, thereby possibly implying domestic origin on the product itself) where space limitations prevented proper disclosures, as long as country-of-origin disclosures instead appeared on packaging. *Hoover Ball & Bearing Company*, 62 F.T.C. 1410, 1413 (1963). *See also Delaware Watch Company, Inc.*, 63 F.T.C. 473 (1963) (permitting the use of a separate tag or label on watches for disclosing foreign origin).

There are a number of constraints on this flexibility, however. Deceptive representations cannot be cured by disclosures provided substantially later in time. *Deception Statement*, 103 F.T.C. at 180. Thus, for example, the use of unqualified Made in USA claims in advertisements or store displays cannot be remedied by qualifications that the consumer may or may not detect upon receiving the package. Any disclosure also must be clear and prominent. *Id.* at 180–81.

20. 19 U.S.C. 1304(a).

21. 19 CFR 134.1(b), 134.1(d)(1), and 134.35. As construed by some courts, substantial transformation occurs when ''as a result of processes performed in that country a new article emerges with a new name, use or identity.'' *Belcrest Linens* v. *United States*, 741 F.2d 1368, 1371 (Fed. Cir. 1984).

22. The U.S. Customs Service, however, has jurisdiction to take action where a required foreign origin marking has been removed and replaced with a ''Made in USA'' marking. The Tariff Act declares it unlawful for anyone (whether importer, wholesaler, or retailer) to cover or remove a foreign-origin label that is already on a product. 19 U.S.C. 1304(i); 19 CFR 134.4.

23. Reportedly, some importers assume that whenever the U.S. Customs Service determines that an imported product will be substantially transformed in the United States and therefore need not bear a foreign marking, that the importer then is free to place a Made in USA label on that product. This view has no support in FTC doctrine or U.S. Customs law. A Made in USA label only would be permitted in that circumstance if it met the FTC's domestic content requirements for Made in USA claims.

24. The Act specifically states that the products must be made here or be ''substantially all'' from products mined or produced in the United States. 41 U.S.C. 10a. The Act does not define what ''substantially all'' means for manufactured goods. However, Executive Order 10582 (19 FR 8723 (1954)) defines ''foreign origin'' under a 50% of cost rule. *See also* 48 CFR 25.101 *et seq.* The Department of Defense and the General Services Administration are the two Federal agencies with prime responsibility for enforcing the Buy American Act.

25. 15 U.S.C. 1950.

26. FTC Policy Statement Regarding Advertising Substantiation at 6, reprinted as appendix to *Thompson Medical Co.*, 104 F.T.C. 648 (1984) (''Substantiation Statement'').

27. Depending on the nature of the claim, the Commission may require a particular level of substantiation, such as ''competent and reliable scientific evidence,'' defined as ''tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the

profession to yield accurate and reliable results.'' *E.g., Nature's Bounty, Inc.*, F.T.C. Docket No. C–3593 (July 21, 1995); *Mattel, Inc.*, F.T.C. Docket No. C–3591 (June 23, 1995).

28. This exclusive emphasis on total ''purchase cost'' of components and subcomponents bought from U.S. plants—rather than singling out only the U.S. labor hours or labor costs upstream in production—offers a number of advantages. One is ease of measurement. Another is that measuring the total purchase cost of all components and subcomponents made in U.S. plants captures not only the total U.S. labor cost but also profit to U.S. component manufacturers. Studies have shown that many consumers have a preference for American-made goods not only out of concern for American labor, but also to increase U.S. wealth and take advantage of American quality. *See The Wirthlin Report*, February 1992 (survey); Foote, Cone & Belding, ''The Buy America Issue,'' May 1992; ''East v. West; What Americans Really Think About Imports,'' *Chain Store Age*, January 1988, pp. 13–15 (Leo J. Shapiro & Associates survey); Smith-Corona test, Tables 3, 5.

29. The total burden to industry of making these determinations will depend, in part, on where the threshold is set. If it is true that most complex products today contain substantial foreign components, then such manufacturers presumably would know that any information search would be fruitless under a high standard.

30. In determining how far back in the process to inquire, a further issue is whether *raw materials*, or only processed goods, should be counted in this or other measurement schemes. For some products, raw materials may be so removed from the final stage of production that they cease to have meaning to consumers as a cognizable product component (*e.g.*, petroleum in plastic products, iron ore in steel products). Computing domestic content down to the raw materials stage also could greatly increase the information-gathering burden for sellers. At the same time, excluding raw materials possibly could lead to anomalous results for products wherein raw materials are a high proportion of cost (*e.g.*, a diamond ring). Obviously, some amount of American labor and wealth flows from basic farming, mining, and other raw materials production. In addition, excluding raw materials from the calculation would require a workable definition of raw materials.

31. One question also is whether it is enough for the part to have been finally assembled in the United States to qualify as a ''U.S. part,'' or must have been substantially transformed here as defined by U.S. Customs rules.

32. *See* Textile Labeling Rules, 16 CFR 303.33(b). The operation of the one step back rule in the textile area can be illustrated as follows. Wool yarn is made in Australia and sold to a U.S. cloth maker. This cloth maker sells the cloth to a U.S. manufacturer of wool suits. The labels would be: *yarn* (''Made in Australia''); *cloth* (''Made in U.S. of foreign yarn''); and *garment* (''Made in USA''). The Commission notes that the textile industry is somewhat unique in that Congress has mandated the placement of Made in USA labels on all covered textile products manufactured here. Thus, there is exceptional need for administrative convenience and a bright-line rule.

33. This is not an issue in the textile context, where the governing regulation sets out the various ''steps'' in the production process. For other products, however, what constitutes one step (or two steps) back in the production process may not be so evident.

34. For example, one form of globalization is the development of ''maquiladoras'' in Mexico. These are plants primarily owned by U.S. firms that provide labor-intensive assembly of components. It is reported that 98% of the raw materials and components used in products assembled by maquiladores are produced in the United States. U.S. International Trade Commission, *Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexican Relations: Phase I: Recent Trade and Investment Reforms Undertaken by Mexico and Implications for the United States*, Inv. No. 332–282, USITC Pub. 2275 (April 1990), pp. 5–14.

35. An additional issue is whether not only cost, but also profit to the U.S. assembler, should be counted in determining the proportion of domestic origin of the product. Profit to *foreign* parts suppliers is implicitly counted toward foreign value, as part of total purchase price of foreign components. Including profits at final assembly also addresses consumers' concerns over U.S. wealth creation. At the same time, some profits in U.S. assembly operations might be diverted to foreign owners, and there are complications in defining profit. The Commission invites comment on the foregoing issues.

36. A minimum percentage would provide the most certain guidance. However, the evidence thus far does not suggest that consumers attach a precise percentage boundary to Made in USA claims. A bright-line percentage also might be more arbitrary for other reasons. For example, products with unchanged domestic parts and labor content could pass back and forth over the cost threshold, based merely on foreign exchange fluctuations.

Dissenting Statement of Commissioner Roscoe B. Starek, III in the Matter of Request for Public Comment in Preparation for Public Workshop Regarding ''Made In USA'' Claims in Product Advertising and Labeling, Matter No. P894219

For the reasons stated in my dissenting statement in Hyde Athletic Industries, Inc., File No. 922–3236, I oppose spending Commission resources on a broad examination of whether and how to change the Commission's standard for unqualified ''Made in USA'' claims. Case-by-case enforcement is the appropriate means to evaluate ''Made in USA'' claims. If consumer perceptions of ''Made in USA'' claims vary from industry to industry or support some other standard, the most promising way to develop that evidence is by litigating individual cases in which the particular ads at issue are copy tested.[1] The Commission regularly addresses in individual cases complex public policy concerns within the scope of its competition and consumer protection missions, with the benefit of arguments, evidence, and a record on which a fully developed opinion can be based. I find no persuasive reason—only, perhaps, some miscalculated conception of expediency—for abandoning case-by-case enforcement in favor of a resource-intensive, unnecessarily broad review more typical of a rulemaking.

As I have stated previously, in order to reduce firms' costs of making ''Made in USA'' claims in compliance with the law, I support providing guidance on the level of substantiation that the Commission will require for those claims. It is unnecessary and ill-advised, however, to drop enforcement efforts against clear violations of Section 5 of the FTC Act while such guidance is being developed.

[FR Doc. 95–25887 Filed 10–17–95; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3707–N–03]

Announcement of Funding Awards for the Youth Development Initiative under Public and Indian Housing Family Investment Centers—FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Public Housing agencies applicants under the Youth Development Initiative under the Family Investment Centers Program (Youth FIC). The purpose of this

[1] The extensive copy testing now planned in preparation for this workshop could provide the Commission with additional evidence of consumer perceptions that may be useful in the assessment of future enforcement actions against a variety of domestic content claims.

document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410, telephone number (202) 708–4214. (This is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The Youth Development Initiative is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

The purpose of the Youth Development Initiative is to further the Department's Operation Safe Home mission that addresses the larger problem of violence in America's low-income communities. The Youth Development Initiative will provide young individuals ages 13–25 with access to comprehensive education and employment opportunities and supportive services. The grants will be for up to three to five years in duration, depending upon the activities undertaken, and will involve youth as active partners, to provide leadership opportunities and improve the capacity for long-term training and services for young residents. The Youth FIC grants will be targeted to assist youth in gaining access to education, employment, and supportive services. HUD expects that this funding will demonstrate the importance of comprehensive supportive services in contributing to the reduction of unemployment among our youth and crime and violence in public housing communities. Recipients were chosen in a competition under selection criteria announced in a Notice of Funding Availability (NOFA) published in the Federal Register on May 13, 1994 (59 FR 25262).

An amendment to the May 13, 1994 Youth FIC NOFA (59 FR 25262) was published on July 18, 1994 (59 FR 36446). In the amendment NOFA on page 36447, second column, ''2.'' application procedures were revised to increase the number of points available in the ranking factors for the FY 1994 Youth Development Initiative under the Family Investment Centers Program from ''(150 points)'' to a ''(Maximum 170 points)''.

Accordingly, based on unanticipated delays in publication of the amendment, the Department recognized that the revised selection criteria proposed would not provide applicants with 30 days to respond to the revised application procedure prior to the deadline for submission of applications. Therefore, to meet Reform Act requirements, the Department decided not to use the ranking factors points indicated in the amendment NOFA or extend the application submission deadline.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) the Department is publishing the names and addresses of the Public Housing agencies which received funding under this NOFA, and the amount awarded to each. This information is provided in Appendix A to this document.

Dated: October 12, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—List of Awardees for the Youth Development Initiative under the Family Investment Centers Program (FY 1994)

Name and address	Grant amount
Housing Authority of the City of Louisville, 420 South Eighth Street, Louisville, Kentucky 40203, (502) 574–3420. Contact: Andrea Duncan	$991,164
Housing Authority of the City of Saint Paul, 480 Cedar Street, Suite 600, St. Paul, MN 55101–2240, (612) 298–5664. Contact: Jonm Gutzman	1,000,000
Housing Authority of the City of Seattle, 120 Sixth Street, North, Seattle, WA 98109–5003, (206) 615–3340. Contact: David Gilmore	1,000,000
Housing Authority of the City of Los Angeles, 2600 Wilshire Boulevard, Los Angeles, CA 90057, (213) 484–5637. Contact: Donald J. Smith	1,000,000
Housing Authority of the City of Niagara Falls, 744 Tenth Street, Niagara Falls, NY 14301, (716) 285–6961. Contact: Michael J. Raymond	1,000,000

[FR Doc. 95–25769 Filed 10–17–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–3973–C–02]

Assistant Secretary for Public and Indian Housing, HUD; Order of Succession; Correction

AGENCY: Office of the Assistant for Public and Indian Housing, HUD.

ACTION: Notice of Order of Succession; correction.

SUMMARY: This notice corrects the Order of Succession published in the Federal Register on Wednesday, October 4, 1995, at 60 FR 52004, by clarifying revocation of the most recent Order of Succession effective May 11, 1994 at 59 FR 24464, and not April 2, 1990 at 55 FR 12291. This notice also corrects the reference contained in the October 4, 1995 Federal Register which indicated that the Order of Succession was subject to the time limitations specified in the Vacancies Act, 5 U.S.C. 3348.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Brenda L. Earle, Staff Assistant to the Assistant Secretary, Office of Public and Indian Housing, Room 4100, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, 202–708–0950. A telecommunications device for hearing impaired persons (TDD) is available at 202–708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On Wednesday, October 4, 1995, at 60 FR 52004, the Department of Housing and Urban Development published a revised Order of Succession for the Office of the Assistant Secretary for Public and Indian Housing effective September 22,

1995. That notice indicated revocation of the Order of Succession published in the Federal Register on April 2, 1990, at 55 FR 12291. The April 2, 1990 Order of Succession was previously revoked by Federal Register notice 59 FR 24464 published on May 11, 1994. This notice makes it clear that the Order of Succession effective on September 22, 1995 and published on October 4, 1995, revokes the Order of Succession published on May 11, 1994. This notice also clarifies references made in the October 4, 1995, Federal Register notice indicating that the Order of Succession is subject to the time limitations specified in the Vacancies Act, 5 U.S.C. 3348.

Accordingly, the Order of Succession published in the Federal Register on October 4, 1995, at 60 FR 52004, is corrected to read as follows:

On page 52004, in FR Doc. 95–24620 [Docket No. FR–3973–D–01], the following changes are made:

The second sentence of the Supplementary Information section which refers to the Vacancies Act is removed. The last sentence of the Section A. Order of Succession, which refers to the Vacancies Act is removed. In Section B. Authority Revoked, the date and citation of ''April 2, 1990, at 55 FR 12291'' should be deleted and ''May 11, 1994, at 59 FR 24464'' inserted in place thereof.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42, U.S.C. 3535(d).

Dated: October 11, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–25768 Filed 10–17–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation of Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final Notice of Johnson O'Malley Program Issues.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) has determined that Method B (as described in the Federal Register notice of August 3, 1995, and below) will be utilized in the distribution of Johnson O'Malley (JOM) program funds beginning in FY 1996. This decision was based upon comments received during the comment period of August 3, 1995, through August 25, 1995, and comments received through the Bureau's tribal consultation process. The August, 1995, comments were in response to the Federal Register notice of August 3, 1995, same subject as above. There were 269 comments received as a direct result of the Federal Register notice. Ninety percent favored Method B as the method by which JOM funds should be distributed. Two percent of the comments submitted favored Method A and eight percent of the comments suggested alternative methods of distribution, primarily modified forms of Method B.

Beginning in FY 1996, Method B will include the following steps:

1. Identification of the number of JOM students served by all JOM contractors in FY 1995.

2. Using the FY 1995 distribution method, identify the amount of JOM funds each prime tribal JOM contractor receives to establish a base for each tribe.

3. Identification of the amount of JOM funds each prime non-tribal JOM contractor (States, public school districts and tribal organizations) receives.

4. Add another line item in budget, Special Programs and Pooled Overhead category, entitled ''Non-tribal JOM Contractors''.

5. Place the proportionate share of JOM funds that are provided to tribes, as prime tribal JOM Contractors, for all JOM students served into each tribes' line item under the TPA.

6. Place the proportionate share of JOM funds that are provided to States, public school districts and tribal organizations, as prime JOM Contractors, for all JOM students served into the non-Tribal JOM contractor line item under the Special Projects and Pooled Overhead category.

FOR FURTHER INFORMATION CONTACT: Charles Geboe or Garry Martin at the following address: Department of Interior, Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, 1849 C St. NW, Washington, D.C. 20240, or call (202) 219–1127.

SUPPLEMENTARY INFORMATION: The publication of this notice is to finalize consultation meetings dealing with JOM that have been conducted by the BIA since 1990. The purpose of consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. Both the House and Senate Reports accompanying the BIA's FY 1995 appropriation act transferred the JOM program from the ''other recurring programs'' account to the ''TPA'' account in the BIA's budget. Senate Report No. 103–294 stated that a portion of the JOM funds may be transferred to the Special Programs and Pooled Overhead category where such funding is not under tribal contracts i.e., states, public school districts and tribal organizations. House Report No. 103–551 required the BIA to consult with tribes on the development of a method of determining each tribe's portion of the JOM program and to publish such proposed methods in the Federal Register prior to finalizing such a distribution method.

Dated: October 6, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–25810 Filed 10–17–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[NV–030–12200–00; Closure Notice No. NV–030–96–01]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1995 Running of the Desert Riders, Inc. Motorcycle Race

AGENCY: Bureau of Land Management, Nevada, Interior.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada on and adjacent to the 1995 Desert Riders, Inc. Motorcycle Race on November 12, 1995. Access will be limited to race officials, entrants, law enforcement and emergency personnel, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1995 Desert Riders, Inc. Motorcycle Race.

EFFECTIVE DATE: November 12, 1995.

FOR FURTHER INFORMATION CONTACT: Karen Malloy, Visitor Use Specialist, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on November 12, 1995, to protect persons,

property, and public land resources on and adjacent to the 1995 Desert Rider, Inc. motorcycle race, permit number NV–034–96–004. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1995 Desert Riders, Inc., motorcycle race course. These lands are within T.18N., R.30E., T.18N., R.31E., T.18N., R.32E., T.17N., R.31E.; T.17N., R.32E; M.D.M. A map of the race course may be obtained from Karen Malloy at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 6 a.m., Sunday, November 12, 1995, to 6 p.m., Sunday, November 12, 1995, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NW ¼ Section 6, T.17N., R.31E., M.D.M., identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event. Authority for closure of public lands is found in 43 CFR 8341, 43 CFR 8364 and 43 CFR 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: October 11, 1995.

James M. Phillips,

Area Manager, Lahontan Resource Area.

[FR Doc. 95–25788 Filed 10–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–931–1020–001]

Resource Advisory Councils; Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils' Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for each meeting includes approval of minutes of the previous meeting, continuation of Council orientation, initial discussion of Standards and Guidelines for management of the public lands within the jurisdiction of the Council and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to any Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for two Council meetings is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the External Affairs Office at the Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520–0006, telephone 702–785–6586.

DATES AND TIMES: The time and location of the meetings are as follows:

Northeastern Great Basin Resource Advisory Council, BLM Office, 702 North Industrial Way, Ely, NV 89301–9408; November 17 starting at 10:00 a.m.; public comment will be November 18 at 1:00 p.m.

Mojave—Southern Great Basin Resource Advisory Council, BLM Office, 4765 W. Vegas Drive, Las Vegas, NV 89126: November 17 starting at 8 a.m.; public comment also on November 17 at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Maxine Shane, Acting Chief of the Office of External Affairs, Nevada State Office, telephone 702–785–6586 or Daniel C.B. Rathbun, Special Assistant to the State Director, Nevada State Office, telephone 702–785–6767.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

Dated: October 11, 1995.

Thomas V. Leshendok,

Acting State Director, Nevada.

[FR Doc. 95–25787 Filed 10–17–95; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: John Hans Weinhart, Riverside, CA, PRT–807014

The applicant requests a permit to reexport and reimport captive-born tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Applicant: Richard Meyer, Estherville, IA, PRT–807493

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by R. Hockly, ''Cullendale'', Bedford, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 12, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–25764 Filed 10–17–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–374]

In the Matter of Certain Electrical Connectors and Products Containing Same; Notice of Commission Determinations (1) To Adopt the Administrative Law Judge's Initial Determination Denying Complainants' Motion for Temporary Relief and (2) Not to Review the Administrative Law Judge's Initial Determination Finding Respondent Foxconn International in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined (1) to adopt the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation denying the motion of complainants AMP Inc. and The Whitaker Corporation for temporary relief, and (2) not to review the ALJ's ID finding respondent Foxconn International in default.

FOR FURTHER INFORMATION CONTACT: Jay Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 8, 1995, based on a complaint filed by AMP Inc. of Harrisburg, Pennsylvania and The Whitaker Corporation of Wilmington, Delaware (collectively ''complainants''). 60 FR 25247. The following firms were named as respondents: Berg Electronics, Inc. (''Berg''); Hon Hai Precision Industry Co., Ltd. (''Hon Hai''); Foxconn International (''Foxconn''); and Tekcon Electronics Corp (''Tekcon''). The Commission also provisionally accepted complainants' motion for temporary relief.

The presiding ALJ held an evidentiary hearing on temporary relief from June 28, 1995, through July 12, 1995. On September 8, 1995, the ALJ issued an ID (Order No. 25) denying complainants' motion for temporary relief. On September 8, 1995, the ALJ also issued an ID (Order No. 23) finding respondent Foxconn in default pursuant to Commission rule 210.16. On September 20, 1995, the parties filed written comments concerning the temporary relief ID. The parties filed reply comments on that ID on September 25, 1995.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 USC § 1337, and Commission rules 210.42 and 210.66 (19 CFR 210.42 and 210.66). Copies of the public versions of the IDs 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 S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: October 10, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–25830 Filed 10–17–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting By Teleconference

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. App. II) a Notice of establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a teleconference meeting of the Commission which is to take place on Wednesday, November 1, 1995. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The Open Meeting By Teleconference will be held on November 1, 1995 in Room C2313 at the Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 beginning at 1:00 pm and continuing until approximately 2:00 pm (EDT).

The purpose of this meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

For Further Information Contact: René A. Redwood, Executive Director, The Glass Ceiling Commission, c/o U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–2313, Washington, D.C. 20210. Telephone (202) 219–7342.

Signed at Washington, D.C., this 12th day of October 1995.

René A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 95–25825 Filed 10–17–95; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission Closed Meeting

Summary: Pursuant to section 10(a) of FACA, this is to announce a meeting of the Glass Ceiling Commission which is to take place on Wednesday, October 25, 1995.

Time and Place: The closed meeting will be held on Wednesday, October 25, 1995 from 1 p.m. to 2 p.m. and held at the U.S. Department of Labor, Room C2313, 200 Constitution Avenue, NW., Washington, DC.

The Commission will meet in closed session in order to discuss commercial characteristics of applicants for the Frances Perkins-Elizabeth Hanford Dole National Award For Diversity and Excellence in American Executive Management. The closing of this meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(4) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(4)). This closing allows the Commission to discuss matters which if disclosed in an open meeting would reveal information that would not customarily be released to the public by the applicants.

For Further Information Contact: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 12th day of October, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–25826 Filed 10–17–95; 8:45 am]

BILLING CODE 4510–23–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Final audit guide for recipients and auditors.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby publishes as final the Audit Guide for Legal Services Corporation Recipients and Auditors (Audit Guide), which was adopted by the LSC Board of Directors on October 6, 1995. This Audit Guide will replace the audit portions of both editions (1981 and 1986) of the current ''Audit and Accounting Guide for Recipients and Auditors'' (Audit and Accounting Guide). The Audit Guide will be maintained as a separate document under the authority of the LSC Office of Inspector General (OIG). The accounting and financial reporting requirements of the Audit and Accounting Guide will remain in effect until amended in the future, and will remain the responsibility of LSC management. All questions regarding LSC accounting requirements should be directed to LSC's Office of Program Evaluation, Analysis and Review (OPEAR).

The Audit Guide prescribes the use of Government Auditing Standards (GAS or GAGAS), and Office of Management and Budget (OMB) Circular A–133. There will be three appendices to the new Audit Guide, which in themselves establish no new rules, regulations or guidelines for recipients, and as such are not published herein. The Appendices are: (1) The Compliance Supplement; (2) the Sample Audit Agreement; and (3) the Guide for Procurement of Audit Services by Legal Services Corporation Recipients.

EFFECTIVE DATE: The requirements of the Audit Guide are effective for audits of fiscal years ending on or after December 31, 1995, except as otherwise authorized by the Corporation.

FOR FURTHER INFORMATION CONTACT: Charmaine Romear, Office of Inspector General, Legal Services Corporation, 750 First St., N.E., 10th Floor, Washington, DC 20002–4250 (Telephone: (202) 336–8840).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation Act requires that the Corporation ''conduct, or require each grantee, contractor, or person or entity receiving financial assistance'' (Section 1009(c)(1))from the Corporation to provide for an annual financial audit. Historically, the Corporation has chosen to require recipients to provide the annual audit pursuant to the Corporation's audit guidance provided in the Audit and Accounting Guides.

On July 30, 1976, the Legal Services Corporation published in the Federal Register its ''Audit and Accounting Guide for Recipients and Auditors'' (41 FR 29951–29979). Pursuant to Section 1008(e) of the Legal Services Corporation Act (42 U.S.C. 2996(g)(c)), the Corporation thereafter requested (41 FR 32794) and received comment from interested persons. The Audit and Accounting Guide became effective on October 4, 1976.

On July 19, 1977, the Corporation published a notice instructing recipients to use the revised Audit and Accounting Guide (June 1977) that had been distributed in June of 1977. (42 FR 37077). The instruction was effective immediately upon publication. There were additional unpublished revisions in September 1979 and 1981, and a separate ''Fundamental Criteria of an Accounting and Financial Reporting System''; each was issued directly to grant recipients.

On February 20, 1985, the Corporation published a notice of availability of a revised Audit and Accounting Guide that had been distributed February 11, 1985. (50 FR 7150). The notice established a 90-day period for the submission of comments. On November 29, 1985, after adoption by the Corporation's Board of Directors, the final publication of the revised Audit and Accounting Guide appeared in the Federal Register. (50 FR 49276). This version of the Audit and Accounting Guide became effective January 1, 1986. Shortly thereafter, however, the Corporation gave recipients the option of using either the September 1981 or the January 1986 version of the Audit and Accounting Guide.

On May 24, 1995, pursuant to the LSC Board Resolution of May 13, 1995 which transferred responsibility for establishing audit policy to the OIG , the OIG published in the Federal Register for public notice and comment the proposed Audit Guide for LSC Recipients and Auditors. (60 FR 27562–27567). The initial notice established a 30-day comment period. The comment period was subsequently extended for 30 additional days to July 24, 1995 through two published notices. (60 FR 30901 and 60 FR 34303).

The Audit Guide makes one major change in the current standards. All financial statement audits for periods ending on or after December 31, 1995, will be conducted pursuant to GAS and OMB Circular A–133, except as otherwise provided by the Corporation.

Twenty-two comments were received. The comments from the American Institute of Certified Public Accountants (AICPA), and the Center for Law and Social Policy (CLASP) have been referenced in the Supplementary Information, as they mirrored those of many other respondents. The comments were analyzed and discussed before the Finance Committee of the LSC Board of Directors in September 1995.

Some of the comments raised issues that relate to the proposed Fiscal Year 1996 (FY96) Appropriation. No response is made to those comments at this time; however, the Corporation is aware of the varying 1996 Appropriation Bills passed by the House and the Senate. The Corporation will consider the application of the audit requirements of this Audit Guide when the Appropriation is enacted.

Several comments were received opposing or requesting the Corporation's re-consideration of the requirement for GAS and OMB Circular A–133 because of increased audit costs, decreased LSC funding for FY96, the impact of staff reductions, and in some cases, the impact on the program's current auditors who may not be qualified to conduct such audits. Adoption of GAS for audits of LSC grants will increase accountability and credibility with the Congress and the public. Audits performed under OMB Circular A–133 will cost more; however, this increased cost will significantly enhance accountability. Although we expect an initial cost increase, we also expect a subsequent reduction in audit costs as auditors become more familiar with the LSC requirements, and as programs become better prepared for the audits. We believe the incremental costs are not substantial, and are balanced by the concomitant savings as a result of a more focused and less intrusive monitoring mechanism.

As to the comments regarding the impact on Independent Public Accountants (IPAs) who are not qualified under GAS, the impact is not necessarily negative. A requirement that the auditor meets the requirements of GAS ensures that a recipient is audited by an IPA with specific training, and thus increases accountability.

There were comments expressing concern about the timing of the adoption of the new audit requirements (December, 31, 1995 audits), and the impact on a program's ability to respond effectively during a period of budget cuts, staff reductions and pending imposition of new restrictions for FY96. Most recommended implementation for audits of fiscal year ends after December 31, 1995. The AICPA recommended

implementation at least six months after finalization of the Audit Guide and the Compliance Supplement. CLASP recommended a voluntary adoption for programs which are not already subject to the requirements and do not have binding audit agreements. The Corporation's Budget Request for FY96, distributed to all current recipients February 1995, contained a statement that the Corporation intended to implement GAS and OMB Circular A–133 for fiscal years ending December 31, 1995, and after. In May 1995, after the transfer of the audit function to the OIG, the OIG published the proposed Audit Guide for comment in the Federal Register. The Board of Directors, having reviewed the comments, has decided to adopt the Audit Guide. Given this history, recipients have had adequate notice that the new requirements were likely to be adopted and it is not unreasonable to implement the new Audit Guide effective December 31, 1995. Moreover, implementation of the new Audit Guide will significantly enhance the fiscal compliance monitoring conducted on behalf of the Corporation, adding comprehensive on-site examination of a recipient's compliance with fiscal regulations to the current desk reviews and on-site compliance reviews. Achieving implementation on December 31, 1995, is particularly important from the perspective of audit coverage—recipients with fiscal years ending on December 31 receive approximately 63% of the total annualized LSC grants. The OIG will extend a one-time exemption on the initial application of these requirements for the following groups of recipients:

Category 1: Programs receiving less than $300,000 in total federal funding (which includes LSC funding), and are not currently required to have a GAGAS audit or an A–133 audit. The one-time exemption is automatic, and does not require prior notification to the OIG.

Category 2: Programs which are not eligible for funding effective January 1, 1996. The one-time exemption is automatic, and does not require prior notification.

Category 3: Programs receiving $300,000 or greater in total federal funding (which includes LSC funding), and currently have binding contracts for generally accepted auditing standards (GAAS) audits. Exemptions will only be granted upon written request, and will only apply to contracts in effect prior to July 1, 1995, which must be submitted to the OIG along with the exemption requests.

Most comments and calls received by the OIG expressed the need to give the recipients and auditors an opportunity to review and comment on the Appendices. Some of these comments expressed concern about, or seemed to be attributable to the statements made in the initial publication that the Appendices were not published as they established no new rule or regulation, and that they would be promulgated without formal adoption by the Corporation's Board of Directors. The Appendices were not published in the Federal Register for notice and comment because none of the documents established new rules or regulations. Rather, they were a reflection of already existing regulations and accounting standards that had been previously subject to notice and comment. Notwithstanding this, it was always intended that recipients and interested parties would be given an opportunity to comment on the Appendices. The ''Compliance Supplement'' was distributed for notice and comment to recipients and interested parties on August 30, 1995. The ''Sample Audit Agreement'' is merely a model which recipients may find useful. The ''Guide for Procurement of Audit Services by Legal Services Corporation Recipients'' was previously distributed in April 1994 to all LSC recipients. Any future revisions to the Audit Guide or its Appendices that reflect or implement new policies or rules would be published for notice and comment in the Federal Register, and would be distributed to recipients and interested parties for comment.

Two Appendices referenced in the May 24, 1995 Federal Register notice of the ''Audit Guide'' were more appropriate to the LSC Accounting Guide, and will be drafted by management. We, therefore, excluded the following from the Audit Guide: 1) Model Format for Audited Financial Statements and Footnotes; and 2) the Fundamental Criteria of an Accounting and Financial Reporting System. Both Appendices were excerpts from the previous Audit and Accounting Guides to make auditors aware of existing LSC requirements for internal control from an audit perspective, and to achieve some form of standardization in the classification of accounts reported in the annual audits. These documents would be subject to review and revision in the near future as a result of changes to two accounting standards for non-profits, Statements of Financial Accounting Standards (SFAS): SFAS 116, Accounting for Contributions Received and Contributions Made; and SFAS 117, Financial Statements of Not-for-Profit Organizations.

There were several comments recommending deletion of paraphrases or quotes from the GAGAS and GAAS standards. It was stated that GAS and GAAS contain sufficient guidance to the auditor, and it was suggested that to streamline the Guide these requirements be incorporated by reference only. Except where special emphasis was needed, we have deleted the restated existing standard.

Some comments disagreed with defining LSC as a major program in the initial publication. The general view was that LSC should not impose criteria for determining a major program for the purposes of OMB Circular A–133 as the Circular already defines the criteria for such determinations. The Audit Guide has been revised to eliminate the reference to LSC as a major program.

Financial Responsibilities of Recipients (Section I–7, Subsection A): The AICPA suggested that the Audit Guide, in discussing the objectives of a financial system, adopt language that is consistent with the definition of internal controls in the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The AICPA also suggested that the title of the Section, ''Maintain Adequate Accounting System,'' be changed to ''Maintain Adequate Internal Controls.'' Both suggestions reflect the view within the audit community that management's responsibility for maintaining adequate internal controls should be emphasized.

The AICPA's suggestion that the Audit Guide adopt the COSO definition of internal controls is contingent on revisions to existing audit standards, viz. Statement on Auditing Standards (SAS) 55, ''Consideration of the Internal Control Structure in a Financial Statement Audit.'' Since SAS 55 revisions have not yet been finalized or implemented, we did not make any revisions to the Audit Guide; however, we have revised the Audit Guide to adopt the suggested title.

Basis for Precluding the Appointment of the Auditor (Section I–7, Financial Responsibilities of Recipients, Subsection B): Comments questioned the definition of the phrase ''if a conflict of interest exists'' as a basis for LSC preclusion on the appointment of an auditor. The respondents argued that GAS addresses auditor independence, and that LSC should not establish different independence standards. We have revised the language to ensure consistency with GAS. The Audit Guide makes reference to the qualification requirements of GAS as one of the bases for LSC's preclusion of the appointment of the auditor.

Retention Period for Audit Working Papers (Section II–1, Audit Requirements, Subsection D): There were comments stating that the eight year period for retention of the audit working papers was too long and burdensome. The retention period has been revised to three years, consistent with the requirements of OMB Circular A–133.

Access to Audit Working Papers and Impact on Attorney Client Privilege (Sections II–1, Audit Requirements, Sub-sections E and G): There were several comments on third party access to information that is protected by the attorney-client privilege, an issue which was raised by management prior to the publication of the proposed Audit Guide. The general concern was that the Audit Guide, under the sections related to ''Access to Audit Working Papers,'' and ''Privileged or Confidential Information,'' did not identify the LSC Act restriction (§ 1009(d)) on access to attorney-client privileged information, nor did it provide guidance on how such information should be handled in the course of the audit. CLASP suggested that the language on ''Privileged and Confidential Information'' (Section II–1, Subsection G of the initial notice) be deleted and access be discussed under ''Access to Audit Working Papers'' (Section II–1, Subsection E). We agreed with the concerns expressed and adopted CLASP's recommendation. The Guide has been revised to delete Section II–1, Subsection G. In addition, the LSC Act restriction has been referenced under Section II–1, Subsection E. We have not accepted CLASP's suggestion that the provisions of state codes of ethics concerning confidential information also be included as a restriction on access. Similarly, we have not accepted management's suggestion that auditors be cautioned to exclude from their working papers material which might be protected. The OIG believes that an audit guide is not the proper vehicle for resolving disputed issues, and that auditing standards provide adequate guidance to the auditors with respect to confidential and/or sensitive information. The Corporation's Board has adopted the OIG position.

Disclosure of Errors and Irregularities and Illegal Acts to Third Parties (Section II–1 Audit Requirements, Subsection F): The AICPA expressed the concern that the terminology used in this section was inconsistent with GAS and the requirement for the notification to the OIG appeared to exceed the requirements of Statement on Auditing Standards (SAS) 53, ''The Auditor's Responsibility to Detect and Report Errors and Irregularities'' and SAS 54, ''Illegal Acts by Clients.'' The Corporation, pursuant to the applicable grant condition and the IG Act, believes that it should be notified of irregularities and illegal acts that come to the attention of the auditor in the course of the audit. This position is consistent with the Corporation's position taken in the 1981 and 1986 Audit and Accounting Guides. The language in the May 24, 1995 notice of the Audit Guide was retained. In addition, the Audit Guide was revised to identify the criteria for the auditor's reporting of such matters that come to his/her attention during the audit, consistent with the 1981 Audit and Accounting Guide.

Review of Internal Controls (Section II–2): The AICPA commented that the ''Fundamental Criteria of an Accounting and Financial Reporting System'' (Appendix D) can be helpful to auditors in assessing the internal control structure as required by GAS and OMB Circular A–133. However, they suggested that the Guide ''should clearly state that the auditor's responsibility for considering and reporting on the organization's internal control structure does not exceed the requirements of'' GAS.

We do not believe that the language as written in the initial notice requires revision; however, for reasons previously expressed and unrelated to this comment, we deleted reference to the ''Fundamental Criteria for an Accounting and Financial Reporting System.'' No further revisions were deemed necessary.

Audit Follow-up on Immaterial Findings (Section II–4, Audit Follow-up): Some comments questioned the requirement for the auditor to follow-up on immaterial findings disclosed in the management letter, stating that the requirement exceeded GAS. Management believes that the requirement for the auditor's follow-up of findings in the management letter is appropriate. This requirement is consistent with the 1981 and 1986 Audit and Accounting Guides.

Audit Objectives (Section II–1, Subsection A): The AICPA commented that the term ''results of operations'' is no longer used in describing financial statements of not-for-profit organizations and recommended substitute language. The Audit Guide was revised to adopt the AICPA's suggested language.

Audit Reports (Section II–1, Subsection B): The AICPA commented that the audit reports referenced in the May 24, 1995 notice identified the reports required under GAS, but did not include the additional reports required under OMB Circular A–133. We have deleted the reports identified in the initial notice and instead made reference to GAS and OMB Circular A–133.

Assessing Compliance with Laws and Regulations (Section II–3): The AICPA suggested that the Audit Guide refer to the laws and regulations as having a material effect on the ''program'' as opposed to the ''organization's financial statements.'' We have adopted the AICPA's suggestion and revised the Audit Guide accordingly.

Audit Report Due Dates (Financial Responsibilities of Recipients, Section I–7, Subsection B): The AICPA commented that the 90-day submission date for the reports was inconsistent with the 13-month requirement of OMB Circular A–133. The Corporation is aware of the inconsistency with OMB Circular A–133, but has chosen not to expand the time limit to 13 months. LSC recipients are currently required to submit their audit reports within 90 days of the close of the audit period. Given the increased attention paid to the activities of LSC grantees at this time, we do not believe it would be prudent to expand that requirement to 13 months. While the Audit Guide requires a submission date that is much shorter than the requirements of OMB Circular A–133, a majority of LSC recipients have been able to submit the audit reports within the period. Based on an OIG analysis of submission of 1993 audits conducted in accordance with OMB Circular A–133, we found that 34% of the recipients submitted reports within the 90 days, and an additional 65% submitted the reports well within the 60 day extension period currently allowed. We believe that these statistics indicate that LSC current requirements are not overly burdensome, in that 99% of recipients comply with the permitted 150 days. We, therefore, extended the 90-day submission requirement to 150 days. Extensions should no longer be necessary, and will be granted only in exceptional cases.

In addition to the general and specific comments noted above, there were minor comments related to the use of inconsistent terms or phrases within the Audit Guide, or the Audit Guide's reference to certain auditing standards without a title description. While these comments do not require a separate response, we have considered them and have revised the Audit Guide accordingly.

For the reasons set forth above, the LSC Audit Guide reads as follows:

Legal Services Corporation

Audit Guide for Recipients and Auditors

Foreword

Under the Legal Services Corporation (LSC) Act, LSC provides financial support to organizations that furnish legal assistance to eligible clients. The Act requires that LSC either conduct or require each recipient of LSC funds to provide for an annual financial statement audit.

In 1976, LSC adopted an ''Audit and Accounting Guide for Recipients and Auditors'' of LSC funds. The Audit and Accounting Guide was amended several times through 1981. Then, effective January 1, 1986, a fully revised Audit and Accounting Guide was published. LSC subsequently declared the 1986 Audit and Accounting Guide to be just an alternative to, rather than a binding replacement of, the amended original Audit and Accounting Guide.

In 1995, LSC promulgated the following Audit Guide to replace the audit portions of both the original and the 1986 Audit and Accounting Guide. In addition, LSC will attach three appendices to this Audit Guide for use by recipients and auditors.

Appendix A. The Compliance Supplement provides notice to both recipients and their auditors of the general federal requirements and the specific LSC regulations which are to be tested for compliance. The Compliance Supplement will change as LSC rules, regulations and guidelines are adopted, amended or revoked, but it establishes no new rules, regulations or guidelines itself.

Appendix B. A Sample Audit Agreement which contains provisions LSC recommends recipients consider incorporating in their audit agreements.

Appendix C. A Guide for Procurement of Audit Services prepared by the LSC Office of Inspector General (OIG) in the spring of 1994 and revised in 1995. This Guide is intended to assist recipients in planning and procuring audit services.

It is anticipated that the accounting portions of both the original and the 1986 Audit and Accounting Guide will also be replaced in the future. Until so notified, recipients should continue to refer to the 1981 and 1986 Audit and Accounting Guide for LSC financial accounting requirements.

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- Appendix C—Guide for Procurement of Audit Services by Legal Services Corporation Recipients

Authorities: The Legal Services Corporation Act of 1974, as amended, § 1008 (a) and (b), (42 U.S.C. 2996g (a) and (b)); § 1009(c)(1), (42 U.S.C. 2996h(c)(1)); and § 1010(c), (42 U.S.C.2996i(c)); The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 4(a)(1); and § 4(b)(1).

Introduction

The Office of Inspector General (OIG) of the Legal Services Corporation (LSC) is responsible for establishing and interpreting LSC audit policy pursuant to a resolution adopted by the LSC Board of Directors on May 13, 1995. The OIG will periodically revise the Audit Guide and related audit policies and will review audit reports to ensure compliance with appropriate auditing standards and the policies prescribed by the Audit Guide. The OIG will examine the audits to identify reported control deficiencies, questioned costs and financial-related instances of noncompliance. Program-related findings and issues identified in the review of the audit reports will be forwarded to management for action.

I–1. Purpose

This Audit Guide provides a uniform approach for audits of LSC recipients and describes recipients' financial responsibilities with respect to the audit. The Audit Guide is to be used in conjunction with the Compliance Supplement (Appendix A). The Audit Guide and the Compliance Supplement provide the auditor flexibility in planning and performing the audit, encourage professional judgement in determining the audit steps necessary to accomplish audit objectives, and do not supplant the auditor's judgement of the audit work required in particular situations. The suggested procedures included in the Compliance Supplement do not cover all the circumstances or conditions likely to be encountered during the course of an audit.

I–2. Required Standards and Guidance

Audits of recipients, contractors, persons or entities receiving financial assistance from LSC (all hereinafter referred to as ''recipients'') are to be performed in accordance with Government Auditing Standards (GAS or GAGAS) issued by the Comptroller General of the United States; Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Not-for-Profit Organizations; and this Audit Guide.

For purposes of OMB Circular A–133, the Compliance Supplement is to be followed for LSC funds. Accordingly, the OMB Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Institutions does not apply to LSC programs.

The requirements of the Audit Guide apply to all recipients and subrecipients of LSC funds, except where specific provisions have been otherwise made through grant or subgrant agreements. This Audit Guide is not intended to apply to grants to law schools, universities or other special grants, which are covered by special provisions. Exceptions to these audit requirements will be determined by the OIG in conjunction with LSC management.

3. Authority

This Audit Guide has been prepared under the authority provided by the following sections of the LSC Act and the IG Act:

Records and Reports—LSC Act § 1008:

(a) The Corporation is authorized to require such reports as it deems necessary from any recipient, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or terms and conditions upon which financial assistance was provided.

Audit—LSC Act § 1009(c)(1):

The corporation shall conduct or require each recipient, contractor, or person or entity receiving financial assistance under this title to provide for an annual financial audit.

Recipients' Non-LSC Funds—LSC Act § 1010(c):

Non-Federal funds received by the Corporation, and funds received by any

recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds * * *.

Duties and Responsibilities * * *—IG Act § 4(a)(1) and 4(b)(1):

4(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—(1) To provide policy direction for and to conduct, supervise, and coordinate audits * * * relating to the programs and operations of such establishment * * *.

4(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall * * * (C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General * * *.

I–4. Effective Date

This Audit Guide is effective for audits of LSC programs for periods ending on or after December 31, 1995, except as otherwise authorized by the Corporation.

I–5. Revisions and Supplements to the Guide

The OIG will periodically revise the Audit Guide and its appendices through bulletins or replacement sections. Revisions may reflect changes to corporate regulations, auditing standards, funding requirements, or other published guidelines. Revisions should be incorporated into the recipient's copy of the Audit Guide, and furnished to the Independent Public Accountants (IPAs) by the recipients. If there are any questions regarding the content of any revisions or supplements, please contact the OIG prior to the audit.

I–6. Cumulative Status of Revisions

Effective date	Description
August 1976 ..	Original Edition of "Audit and Accounting Guide for Recipients and Auditors" issued.
June 1977	Revised Original Edition of Audit and Accounting Guide issued.
September 1979.	Revision to Pages 4–1 and 6–6.
September 1981.	Revision to Pages ii, 4–1, 6–6, VIII–3, and addition of Page 4–2.
January 1, 1986.	Revised 1986 Edition of Audit and Accounting Guide Effective.
August 13, 1986.	Regulation 1630 Replaces Chapter 4 of both the Original and 1986 Edition of the Audit and Accounting Guide.
December 31, 1995.	Chapter 6 of both Original and 1986 Audit and Accounting Guide replaced by Audit Guide.

I–7. Financial Responsibilities of Recipients

A. Maintain Adequate Internal Controls

Recipients, under the direction of their boards of directors, are required to establish and maintain adequate accounting records and internal control procedures. Until revised, guidance with regard to these responsibilities is found in both LSC's Original and 1986 Edition of the ''Audit and Accounting Guide for Recipients and Auditors,'' referred to in I–6, above. An effective financial system should accomplish the following objectives:

1. Resources are safeguarded against waste, loss and misuse;

2. Resources are used consistent with LSC Act, regulations and grant conditions;

3. Management is provided with timely, accurate financial information sufficient to manage the resources of the recipient; and

4. Reporting is reliable and in sufficient detail to demonstrate to funding sources and the general public the recipient's commitment to accountability for the resources with which it has been entrusted.

B. Provide Audited Financial Statements

Recipients are responsible for preparing annual financial statements and arranging for an audit of those statements to be completed within 150 days of the recipient's fiscal year end. The recipients' boards of directors have the final responsibility for the appointment of the auditor. However, consistent with the authority granted in the LSC Act § 1009(c)(1), LSC reserves the right to preclude the appointment of an auditor if experience has shown the auditor's work to be unsatisfactory and/or the auditor does not meet the qualification requirements of GAS.

A written agreement between the recipient and the IPA must be executed and, at a minimum, is to specifically include all matters described in Section II–1 of this Audit Guide (Subsections A through F). Contracts or engagement letters should also contain an escape clause that would allow, without significant penalty, modification or cancellation made necessary by changes in the law.

Appendix B is a sample audit agreement that includes the required matters described in Section II–1, and additional provisions that can be used to document the understanding between the recipient and the IPA. Recipients should consider incorporating these additional provisions in their audit.

In connection with the procurement of audit services, recipients should refer to the Guide for Procurement of Audit Services (Appendix C).

II. Audit Performance Requirements

II–1. Audit Requirements

A. Objectives

The primary audit objectives are to determine whether:

1. the financial statements are presented fairly, in all material respects, in conformity with Generally Accepted Accounting Principles (GAAP), or other Comprehensive Basis of Accounting;

2. the internal control structure provides reasonable assurance that the institution is managing Corporation funds in compliance with applicable laws and regulations, and controls ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

3. the recipient has complied with applicable provisions of federal law, Corporation regulations and the grant agreement that may have a direct and material effect on its financial statement amounts.

B. Reports

The IPA will prepare the audit reports required by GAS and OMB Circular A–133. Recipients should ensure that the management letters are included with the report submissions to LSC.

C. Qualifications of the IPA

The comprehensive nature of auditing performed in accordance with GAS places on the IPA the responsibility for ensuring that: (1) The audit is conducted by personnel who collectively have the necessary skills; (2) independence is maintained; (3) applicable standards are followed in planning and conducting audits and reporting the results; (4) the IPA has an appropriate internal quality control system in place; and (5) the IPA undergoes an external quality control review. IPAs must meet the qualifications stated in Government Auditing Standards.

D. Audit Working Papers

The audit working papers will be prepared in accordance with GAS, and

will be retained by the IPA for at least three years from the date of the final audit report.

E. Access to Audit Working Papers

The audit working papers will be available for examination upon request by representatives of LSC and the Comptroller General of the United States. The LSC Act, § 1009(d), restricts the Corporation and the Comptroller General's access to any reports or records subject to the attorney-client privilege. The audit working papers will be subject to Quality Assurance Review conducted by the LSC OIG.

F. Disclosure of Irregularities, Illegal Acts and Other Non-Compliance

If, during an audit, matters are uncovered relative to actual, potential, or suspected defalcations, or other similar irregularities, the IPA will comply with Statement on Auditing Standards (SAS) Number 53, ''The Auditor's Responsibility to Detect and Report Errors and Irregularities,'' and SAS Number 54, ''Illegal Acts by Clients.'' While the auditor may contract directly with the recipient for audit services, it is emphasized that any items considered by the auditor to justify reporting to the recipient's program director and/or board of directors, should also be included in the management letter for LSC's consideration. If such items relate to the recipient's capabilities to safeguard and account for LSC funds, the IPA shall notify immediately the Office of Inspector General at (202) 336–8830.

II–2. Review of Internal Controls

In accepting LSC funds, recipient management asserts that its accounting system is adequate to comply with LSC requirements. As part of the review of internal controls the auditor is required to evaluate the effectiveness of the recipient's accounting system and internal controls. The primary objectives of this evaluation are to ensure that resources are safeguarded against waste, loss and misuse, and that resources are used consistent with LSC regulations and grant conditions.

II–3. Assessing Compliance With Laws and Regulations

The requirements set out in the Compliance Supplement (Appendix A) are those that could have a material impact on an organization's financial statements. Accordingly, examination of these compliance requirements are to be included as part of the audit.

The Compliance Supplement specifies the objectives and provides suggested procedures to be considered in the auditor's assessment of a recipient's compliance with laws and regulations. The suggested procedures can be used to test for compliance with laws and regulations, as well as to evaluate the related controls. Auditors should use professional judgement to decide which procedures to apply, and the extent to which reviews and tests should be performed. Some procedures require a review and evaluation of internal controls. If the reviews and evaluations were performed as part of the internal control structure review, audit procedures can be modified to avoid duplication. Auditors should also refer to the grant agreements for additional requirements.

In certain cases non-compliance may result in questioned costs. Auditors are to ensure that sufficient information is obtained to support the amounts questioned. Working papers should adequately document the basis for any questioned costs and the amounts reported.

II–4. Audit Follow-up

Consistent with GAS paragraph 4.10, the auditor is required to follow-up on known material findings and recommendations from previous audits that could affect the financial statement audit. The objective is to determine whether timely and appropriate corrective action has been taken. Auditors are required to report the status of uncorrected material findings and recommendations from prior audits. In addition, these requirements are also applicable to findings and recommendations issued in a management letter.

III. Audit Reporting Requirements

III–1. Audit Reports and Distribution

IPAs should follow the requirements of GAS, OMB Circular A–133 and Statement on Auditing Standards (SAS) 74 (and any revisions thereto) for the content and format of the reports. Four copies of the audit reports and management letter, where applicable, are to be submitted to the LSC OIG within 150 days of the recipient's year end. Under exceptional circumstances, an extension of the 150-day requirement may be granted. Requests for extensions should be in writing, and directed to the Office of Inspector General.

III–2. Views of Responsible Officials

Consistent with GAS paragraph 7.38, auditors are encouraged to report the views of responsible program officials concerning the auditors' findings, conclusions, and recommendations, as well as corrections planned, where practical.

IV. Reference Materials

A. Title X—Legal Services Corporation Act of 1974, 42 USC 2996; Public Law 93–355, amended by Public Law 95–222 and 98–166.

B. 45 Code of Federal Regulations Part 1600, *et seq.*

C. Government Auditing Standards, issued by the Comptroller General of the United States, 1994 Revision.

D. OMB Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

E. AICPA Professional Standards, Volume I.

F. AICPA Integrated Practice System, Not-For-Profit Organizations Audit Manual.

G. Practitioners Publishing Company Guide to Audits of Nonprofit Organizations, Seventh Edition (June 1994).

H. AICPA Statement of Position (SOP) 92–9, Audits of Not-for-Profit Organizations Receiving Federal Awards, December 28, 1992.

I. Pursuant to LSC Regulations, 45 C.F.R. 1630.4(g):

The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations acts, this part, the Audit and Accounting Guide for Recipients and Auditors, and Corporation rules, regulations, guidelines, and instructions.

Among the OMB Circulars which might be referred to if LSC policies are not dispositive:

1. Office of Management and Budget (OMB) Circular A–50 (Revised), Audit Follow-up.

2. OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

3. OMB Circular A–122, Cost Principles for Nonprofit Organizations.

4. OMB Circular A–123, Internal Control Systems.

5. OMB Circular A–127, Financial Management Systems.

Dated: October 13, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–25841 Filed 10–17–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL INSTITUTE FOR LITERACY

Advisory Board; Meetings

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board

(Board). This notice also describes the function of the Board. 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 the meeting.

DATES AND TIME: November 9, 1995, 9:00 a.m. to 4:00 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Carolyn Staley, Deputy Director, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1526.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions'' (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In additional, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on November 9, 1995 from 9:00 a.m. to 4:00 p.m. The meeting of the Board is open to the public. The agenda includes discussion of program year 95–96 activities and review of new NIFL initiatives. Records are kept of all Board proceedings and are available for public inspection at the National Institute of Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006 from 8:30 a.m. to 5: p.m.

Dated: October 12, 1995.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 95–25767 Filed 10–17–95; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–094)]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement: 60 FR 46314, Notice Number 95–084, September 6, 1995.

Previously Announced Dates of Meeting: October 17, 1995, 8:30 a.m. to 4:30 p.m.; October 18, 1995, 8:30 a.m. to 4:30 p.m.; and October 19, 1995, 8:30 a.m. to 11:30 a.m. The meeting will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 414/604–5567.

Dated: October 11, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–25800 Filed 10–17–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: November 6–7, 1995.

Place: Rooms, 360, 365 and 390, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Karolyn Eisenstein, Program Director, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1850.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Sites for Research Experiences for Undergraduates in Chemistry 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. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25856 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as attended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources.

Date and Time: November 8, 1995 10:15 a.m., November 9, 1995 8:00 a.m.

Place: Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, Room 835, Arlington, VA 22230, (703) 306–1603.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1995 Programs and Initiative. Strategic Planning for FY 1996 and Beyond.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25853 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of 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 Geosciences

Date & Time: Wednesday, November 8, 1995; 8:30 a.m.-3:00 p.m.

Place: St. James Hotel, 950 24th Street, Suite 118 Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Joan R. Mitchell, Science Associate, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate OCE's Research Experiences for Undergraduate (REU) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25852 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences, Subcommittee on Astronomical Sciences (66).

Date and Time: November 7 and 8, 1995, 9:00 a.m.–6:00 p.m.

Place: Room 340, National Science Foundation, 420 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Hugh M. Van Horn, Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1820.

Purpose of Meeting: To provide advice and recommendations and discuss status of NSF-funded astronomy projects with the objective of achieving the highest quality forefront research for the funds allocated.

Agenda: Discussion of Strategic Plan for the Division of Astronomical Sciences. Discussion of FY 1996 Budget.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25851 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences.

Date and Time: November 9, 1995, 8:30 AM–7:00 PM, November 10, 1995, 8:30 AM–4:00PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: John B. Hunt, Executive Officer, MPS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1802.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda:

November 9, 1995

AM—Introductory Remarks, Discussion on Graduate and Post Doctoral Education Workshop, MPS Facilities, and the Office of Multidisciplinary Activities

PM—Working Group Sessions on Programs and Plans/Education/Measures of Success

November 10, 1995

AM—Reports on Working Group Sessions, Discussion on MPS Portfolio and Draft MPS Strategic Plan

PM—Discussion/Summary of Issues

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25854 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of 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 Research, Evaluation and Communication.

Date and Time: November 6, 1995; 8:30 a.m. to 6:00 p.m., November 7, 1995; 9:00 a.m. to 4:30 p.m.

Place: Rooms 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Applications of Advanced Technologies Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25855 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of 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 Research, Evaluation and Communication.

Date and Time: November 6, 1995; 8:30 a.m. to 5:30 p.m., November 7, 1995; 8:30 a.m. to 4:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ms. Barbara Lovitts, Associate Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1652.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Research in Teaching and Learning Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: October 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25857 Filed 10–17–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on October 31, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

A portion of the meeting may be closed to public attendance to discuss General Electric Nuclear Energy proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, October 31, 1995—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the emergency procedure guidelines developed by the BWR Owners Group (BWROG) to mitigate an ATWS event compounded by core power instability. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, BWROG, General Electric Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 12, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–25802 Filed 10–17–95; 8:45 am]

BILLING CODE 7590–01–M

Correction to Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

On October 11, 1995, the Federal Register published the Biweekly Notice of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations. On page 52927, Column 2, Paragraph 2, the first line should read as follows: ''By November 13, 1995, the licensee.''

Dated at Rockville, Maryland, this 12th day of October 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25803 Filed 10–17–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–289]

GPU Nuclear Corporation, et al.; Three Mile Island Nuclear Station, Unit No. 1; Exemption

I

GPU Nuclear Corporation (the licensee) is the holder of Facility Operating License No. DPR–50, which authorizes operation of Three Mile Island Nuclear Station, Unit No. 1 (TMI–1). The license provides, among other things, that the licensee be subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Dauphin County, Pennsylvania.

II

By letter dated June 1, 1995, the licensee requested an exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 that would enable the use of two demonstration assemblies during TMI–1 Cycles 11, 12, and 13. These regulations refer to pressurized water reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. The two demonstration assemblies to be used during these fuel cycles contain fuel rods with zirconium-based claddings that are not chemically identical to zircaloy or ZIRLO.

Since 10 CFR 50.46 and Appendix K to 10 CFR Part 50 identify requirements for calculating emergency core cooling system (ECCS) performance for reactors containing fuel with zircaloy or ZIRLO cladding, and 10 CFR 50.44 relates to the generation of hydrogen gas from a metal-water reactor with reactor fuel having zircaloy or ZIRLO cladding, an exemption is required to place the two demonstration assemblies containing fuel rods with advanced zirconium based cladding in the core.

III

Title 10 of the Code of Federal Regulations at 50.12(a)(2)(ii) enables the Commission to grant an exemption from the requirements of Part 50 when special circumstances are present such that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and 10 CFR Part 50, Appendix K is to establish requirements for the calculation of ECCS performance. The licensee has performed a calculation demonstrating adequate ECCS performance for TMI–1 and has shown that the two demonstration assemblies do not have a significant impact on that previous calculation. As such, the licensee has achieved the underlying purpose of 10 CFR 50.46 and 10 CFR Part 50, Appendix K. The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a postulated loss-of-coolant accident. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. The small number of fuel rods in the two demonstration assemblies containing advanced zirconium-based claddings in conjunction with the chemical similarity of the advanced claddings to zircaloy and ZIRLO ensures that previous calculations of hydrogen production resulting from a metal-water reactor would not be significantly changed. As such, the licensee has achieved the underlying purpose of 10 CFR 50.44.

The two demonstration assemblies that will be placed in the TMI–1 reactor during Cycles 11, 12, and 13 meet the same design bases as the fuel in the reactor during previous cycles. No safety limits or setpoints have been altered as result of the use of the two demonstration assemblies. The demonstration assemblies will be placed in core locations that will not experience limiting power peaking during Cycles 11, 12, or 13. The advanced claddings have been tested for corrosion resistance, tensile and burst strength, and creep characteristics. The results indicate that the advanced claddings are safe for reactor service.

IV

For the foregoing reasons, the NRC staff has concluded that the use of the two demonstration assemblies in the TMI–1 reactor during Cycles 11, 12, and 13 will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present as specified in 10 CFR 50.12(a)(2)(ii) such that application of 10 CFR 50.46, 10 CFR Part 50, Appendix K, and 10 CFR 50.44 to explicitly consider the advanced clad fuel rods present within the two demonstration assemblies is not necessary in order to achieve the underlying purpose of these regulations.

Accordingly, the Commisslon has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest, and hereby grants GPU Nuclear Corporation an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 in that explicit consideration of the advanced zirconium-based clad fuel present within the two demonstration assemblies is not required in order to be in compliance with these regulations. This exemption applies only to the two demonstration assemblies for the time period (Cycles 11, 12, and 13) for which these assemblies will be in the TMI–1 reactor core.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 34559).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 12th day of October 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25804 Filed 10–17–95; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

The Tenth Meeting of the President's Council on Sustainable Development (PCSD) in Washington, DC

Summary: The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor, and Native American organizations, will convene its tenth meeting in Washington, DC.

The President's Council on Sustainable Development will review the final draft of the report to President Clinton. The report will encompass goals for achieving a sustainable future, indicators of progress, and policy recommendations for how to achieve sustainability. The Council will also discuss a recommended strategy for implementing sustainable development policy options and practices.

Dates/Times: Wednesday, 1 November 1995–3:00–5:00 p.m.

Place: U.S. Chamber of Commerce, 1615 H Street, NW., Washington, DC.

Status: Open to the Public/Public comments are welcome.

Contact: 202–408–5296.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 95–25758 Filed 10–17–95; 8:45 am]

BILLING CODE 4310–10–M

POSTAL RATE COMMISSION

[Order No. 1083; Docket No. A96–1]

In the Matter of Burr, Nebraska, 68324–0128 (Robert Brandt, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued October 13, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A96–1

Name of Affected Post Office: Burr, Nebraska 68324–0128.

Name(s) of Petitioner(s): Robert Brandt, *et al.*

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: October 5, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by October 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

October 5, 1995	Filing of Appeal letter.
October 13, 1995	Commission Notice and Order of Filing of Appeal.
October 30, 1995	Last day of filing of petitions to intervene [*see* 39 CFR § 3001.111(b)].
November 9, 1995	Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
November 29, 1995	Postal Service's Answering Brief [see 39 CFR 3001.115(c)].
December 14, 1995	Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].

Appendix—Continued

December 21, 1995	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
February 2, 1996	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].

[FR Doc. 95–25831 Filed 10–17–95; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36360; File No. SR–NSCC–95–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Temporary Approval of a Proposed Rule Change Limiting the Use of Letters of Credit To Collateralize Clearing Fund Contributions

October 11, 1995.

On August 21, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–95–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on September 8, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on a temporary basis through September 30, 1996.[3]

I. Description

NSCC's rule change modifies the amount of a member's required clearing fund deposit that may be collateralized by letters of credit. Specifically, the rule change increases the minimum cash contribution for any member that uses letters of credit from $50,000 to the greater of $50,000 or 10% of that member's required clearing fund deposit up to a maximum of $1,000,000. In addition, the rule change provides that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section of NSCC's rules for purposes of clarity and includes other nonsubstantive drafting changes. The effect of the rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

When NSCC first filed this change, the impetus was to improve NSCC's liquidity resources by requiring additional deposits of cash and cash equivalents. Since that time, NSCC has obtained additional liquidity resources through a line of credit with a major New York clearinghouse bank. NSCC currently has a three hundred million dollar line of credit that can be used for liquidity purposes, and the letters of credit in the NSCC clearing fund are available as collateral for this line of credit.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed to ensure the safeguarding of securities and funds in its custody or control or for which it is responsible and to protect investors and the public interest.[4] The Commission believes NSCC's proposal to limit the use of letters of credit to collateralize clearing fund obligations should make NSCC's clearing fund more liquid. A liquid clearing fund is necessary to ensure the safety and soundness of a clearing agency. Therefore, NSCC's proposal is consistent with the requirements under the Act with regard to NSCC's obligation to safeguard securities and funds and to protect the interests of investors and of the public.

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by the holder, a clearing agency holding letters of credit will be exposed to risk should the issuer refuse to honor its promise to pay. Furthermore, because under the Uniform Commercial Code the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, a clearing agency making a payment request either may have to await payment or may have to seek alternative short-term financing. This waiting period could reduce a clearing agency's liquidity and thereby could hinder its ability to meet its payment obligations on a timely basis.[5]

NSCC has experienced over a 200% increase in both cash and securities deposited as clearing fund collateral since the proposal first received temporary approval. Because cash and securities are generally more liquid than letters of credit, the enhanced level of such deposits should help to ensure the liquidity of the clearing fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing the risk associated with the use of letters of credit, the proposal is consistent with NSCC's responsibilities under the Act to safeguard securities or funds in its custody or control and to protect investors and the public in general.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–12) be and hereby is approved on a temporary basis through September 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[1] 15 U.S.C. 78s(b0(1) (1988).

[2] Securities Exchange Act Release No. 36172 (August 31, 1995), 60 FR 46878.

[3] The proposed rule change was originally filed on October 27, 1989, and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 [File No. SR–NSCC–89–16]. Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and assess the use of letters of credit as clearing fund collateral. Most recently, the Commission extended temporary approval through September 30, 1995. Securities Exchange Act Release No. 34745 (September 29, 1994), 59 FR 50949 [File No. SR–NSCC–94–18].

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] The Division of market Regulation (''Division'') is still concerned that 70% may be too high a percentage of a member's clearing fund deposit that may be collateralized with letters of credit. Consequently, the Division is continuing its review of the 70% concentration limit and its effect on NSCC's clearing fund.

[6] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–25821 Filed 10–17–95; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–21415; 811–6280]

Anthem Funds Trust; Application

October 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Anthem Funds Trust.

RELEVANT ACT SECTIONS: Order requested under section 8(f).

FILING DATES: The application was filed on September 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearings requests should be received by the SEC by 5:30 p.m. on November 6, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of Service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1000 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Law Clerk, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company which was organized as an Indiana business trust on January 17, 1991. On February 8, 1991, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on May 17, 1991, and the initial public offering commenced immediately thereafter. Applicant was called ''Sagamore Funds Trust'' and was comprised of three series of shares from January 17, 1991 until June 30, 1994. On June 30, 1994, applicant changed its name to ''Anthem Funds Trust.'' On May 2, 1994, applicant filed an amendment to its registration statement under the Securities Act of 1933 to register six separate series of common stock. This registration statement became effective on July 1, 1994, and the initial public offering of these separate series commenced immediately thereafter. Presently, applicant is comprised of nine series: Aggressive Growth Fund, Value Fund, Growth & Income Fund, Equity Income Fund, Balanced Fund, Income Fund, Government Securities Fund, Intermediate U.S. Government Securities Fund, and Municipal Securities Fund.

2. On April 28, 1995, applicant's Board of Trustees (the ''Board'') unanimously authorized through a written consent action a Plan of Liquidation (the ''Plan'') under which all of the assets of applicant would be sold and the assets distributed to applicant's unitholders on June 30, 1995 (the ''Liquidation Date'').

3. On May 24, 1995, definitive proxy materials were filed with the SEC. On or about May 24, 1995, definitive proxy materials were distributed to applicant's unitholders. On June 23, 1995, applicant's unitholders approved the Plan.

4. As of May 31, 1995, there were 7,712 units outstanding of the Aggressive Growth Fund, 14,609 units outstanding of the Value Fund, 132,852 units outstanding of the Growth & Income Fund, 7,461 units outstanding of the Equity Income Fund, 103,733 units outstanding of the Balanced Fund, 5,958 units outstanding of the Income Fund, 34,570 units outstanding of the Government Securities Fund, 6,428 units outstanding of the Intermediate U.S. Government Securities Fund, and 5,040 units outstanding of the Municipal Securities Fund. At that time, the Aggressive Growth Fund had net assets of $87,143 or a net asset value of $11.30 per unit, the Value Fund had net assets of $153,848 or a net asset value of $10.53 per unit, the Growth & Income Fund had net assets of $1,541,725 or a net asset value of $11.60 per unit, the Equity Income Fund had net assets of $80,489 or a net asset value of $10.79 per unit, the Balanced Fund had net assets of $1,182,805 or a net asset value of $11.40 per unit, the Income Fund had net assets of $59,072 or a net asset value of $9.91 per unit, the Government Securities Fund had net assets of $351,213 or a net asset value of $10.16 per unit, the Intermediate U.S. Government Securities Fund had net assets of $63,587 or a net asset value of $9.89 per unit, and the Municipal Securities Fund had net assets of $50,968 or a net asset value of $10.11 per unit.

5. On the Liquidation Date, applicant paid a liquidating distribution in cash to its unitholders in the amount $1,760,913. All unitholders received a distribution per unit equal to the net asset value of shares held on the Liquidation Date. Anthem Capital Management, Inc., the adviser of applicant (the ''Adviser''), received a distribution per unit equal to the net asset value of shares held on the Liquidation Date reduced by unamortized organizational costs. Unitholders of the Aggressive Growth Fund received a total distribution of $64,547 or a distribution per unit of $11.33; unitholders of the Value Fund received a total distribution of $69,179 or a distribution per unit of $10.57; the Adviser received a total distribution of $36,949 or a distribution per unit of $8.52 as unitholder of the Growth & Income Fund, and all other unitholders of the Growth & Income Fund received a total distribution of $680,519 or a distribution per unit of $11.65; unitholders of the Equity Income Fund received a total distribution of $62,226 or a distribution per unit of $10.82; the Adviser received a total distribution of $42,098 or a distribution per unit equal to $9.41 as unitholder of the Balanced Budget Fund, and all other unitholders of the Balanced Fund received a total distribution of $483,988 or a distribution per unit of $11.43; unitholders of the Income Fund received a total distribution of $49,933 or a distribution per unit of $9.95; the Adviser received a total distribution of $39,402 and a distribution per unit of $8.00 as unitholder of the Government Securities Fund, and all other unitholders of the Government Securities Fund received a total distribution of $131,070 or distribution per unit of $10.23; unitholders of the Intermediate U.S. Government Securities Fund received a total distribution of $49,898 or distribution per unit of $9.93; and unitholders of the Municipal Securities Fund received a total distribution of $51,103 or a distribution per unit of $10.14.

6. All expenses incurred in connection with the liquidation, approximately $47,000, were and will

be paid by the Adviser. Certain deferred organizational expenses as well as all debts not paid by applicant prior to the Liquidation Date were assumed and paid by the Adviser.

7. As of the date of the application, applicant had no assets, debts, or unitholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

8. On September 5, 1995, applicant filed a resolution with the Secretary of State of Indiana declaring its intention to withdraw and surrender its authority to transact business as an Indiana business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25820 Filed 10–17–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Garcis U.S.A., Inc.; Order of Suspension of Trading

October 13, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Garcis U.S.A., Inc. (''Garcis'') because of questions regarding the accuracy of assertions by Garcis, and by others, in documents sent to and statements made to market-makers of the stock of Garcis, other broker-dealers, and to investors concerning, among other things: (1) The identity of the persons in control of the operations and management of the company; (2) the amount of sales and customer orders received by Garcis; and (3) contracts entered into by Garcis.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, October 13, 1995 through 11:59 p.m. EST, on October 26, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25824 Filed 10–13–95; 1:13 pm]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21419; International Series Release No. 867; 812–8852]

Investor AB; Notice of Application

October 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Investor AB (''Investor'').

RELEVANT ACT SECTION: Order requested under section 3(b)(2) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. Applicant is a Swedish diversified industrial holding company.

FILING DATES: The application was filed on February 18, 1994, and was amended on February 6, 1995, June 6, 1995, and October 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 6, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, S–10332, Stockholm, Sweden; or c/o Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attn: Pierre de Saint Phalle, Esq.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUMMARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Investor is a diversified industrial holding company incorporated in Sweden in 1916. Investor's founders and principal shareholders are the Wallenberg family and foundations, which together control approximately 40% of the outstanding voting securities of Investor. Investor was established to hold the equity interests of a predecessor of Skandinaviska Enskilda Banken (''SEB'') in response to proposed Swedish legislation to prohibit Swedish banks from having equity holdings. In 1946, Investor's sister company Förvaltnings AB Providentia (''Providentia'') was formed to hold equity interests that SEB had acquired subsequent to 1916. From their inception, the goal of both Investor and Providentia has been to maintain, acting together, a controlling equity interest in a core group of companies. Historically, Investor and Providentia have tended to consolidate their interest in fewer corporations in order to maintain or increase their equity interest in their core holdings. The core holdings of Investor and Providentia tended to be substantially similar and the companies were characterized by interlocking boards of directors and common officers. In 1991, Investor and Providentia acquired all of the outstanding securities of Saab-Scania, an engineering, manufacturing, and technology company, further defining Investor as an industrial holding company. As a result of this restructuring, Investor acquired all of the outstanding securities of Providentia.

2. Investor's holdings include companies in the industrial, engineering, banking and finance, pharmaceutical, and forestry sectors. Investor owns a controlling interest in, among other companies, six industrial companies (Incentive, Electrolux, SKF, Astra, STORA, and Atlas Copco) which represent its core holdings. Investor has maintained a long association and involvement in each of these six companies. In addition, Investor holds all of the outstanding equity securities of Saab AB (''Saab'') and AB (''Scania''), companies which were created from the split of Saab-Scania AB on May 16, 1995.

3. Four of the six industrial companies Investor controls, Incentive, Atlas Copco, SKF, and Electrolux, are classified in Sweden as ''engineering companies'' because they manufacture engineering products (the ''Engineering Companies''). Of the two other controlled industrial companies, Astra is a pharmaceutical company, and STORA is a forestry company. As of June 30, 1995, Investor directly owned 36% of the outstanding voting securities of Incentive, 30% of the outstanding

voting securities of SKF, and 45% of the outstanding voting securities of Electrolux, thus exercising control over these companies within the meaning of section 2(a)(9) of the Act. As well, the SEC has determined that Investor also controls Atlas Copco, notwithstanding the fact that Investor owns less than 25% of the outstanding voting shares of Atlas Copco.[1]

4. Incentive's businesses involve manufacturing in the transportation, environment, materials handling, medical technology, development, and power industries. Incentive is currently carrying out a comprehensive restructuring program to become strictly an engineering-oriented manufacturing company. Incentive currently owns 24.5% of the capital stock and 32.8% of the voting power of ASEA, a global electrical engineering group. Three members of Investor's board of governors serve on Incentive's board of directors, including Investor's Vice Chairman, who serves as Incentive's Chairman.

5. Atlas Copco is an international contractor and manufacturer of compressors, mining and contracting equipment, and industrial production equipment. Four members of Investor's board of directors serve on Atlas Copco's board of directors, including Investor's Chairman, Vice Chairman, and a director, who serve, respectively, as the Chairman and two Vice Chairman of Atlas Copco. Investor's management was instrumental in implementing a comprehensive restructuring program in Atlas Copco's contracting and mining technology business, as well as in Atlas Copco's acquisitions of various companies, including Secoroc and AEG Electrowerkzeuge.

6. SKF is the world's largest manufacturer of rolling bearings, with rolling bearings and related products accounting for slightly more than 90% of sales. Three members of Investor's board of directors serve on SKF's board of directors, including two of investor's directors who serve, respectively, as Chairman and President and CEO of SKF.

7. Electrolux is one of the world's leading manufacturers of household appliances. Electrolux manufacturers vacuum cleaners, absorption refrigerators for recreational vehicles and hotel rooms, institutional kitchen equipment, industrial laundry appliances, and chain saws. Two of Investor's directors serve on the board of directors of Electrolux, including Investor's Vice Chairman, who serves as the Chairman of Electrolux.

8. The principal businesses conducted by Saab include the manufacture of trucks, buses, and engines. The principal businesses conducted by Scania include the manufacture of civil and military aircraft, aircraft components, and defense products, and the creation and production of space, industry, automotive, and traffic applications.[2] In addition, Saab participates in the manufacture of passenger cars through its 50% ownership interest in Saab Automobile AB.[3]

9. Investor expects to sell a portion of its equity ownership in Scania in the near future. The exact amount to be sold has not been determined, but Investor currently anticipates that it will retain at least 50% of the voting shares of Scania at the conclusion of any initial public offering and that, in all events, Investor would own more than 25% of the voting stock of Scania at the conclusion of any series of offerings, so that Investor would continue to control Scania for purposes of the Act. Investor intends to repay debt with the proceeds of any such offering.

10. Presently, Investor is excepted from the definition of investment company by section 3(c)(1) of the Act, since Investor currently has fewer than 100 U.S. investors.[4] Investor is considering the possibility of issuing securities in the United States, however, at which time section 3(c)(1) would no longer be an available exception. Although Investor believes that it is primarily engaged in the business of automobile and truck, aerospace and technological systems manufacturing, and other engineering industries through its wholly-owned subsidiaries and the Engineering Companies, applicant requests an order so that it may make its U.S. offering without the uncertainties created by the possibility that applicant might be considered an investment company.

Applicant's Legal Analysis

1. Applicant requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investment, reinvesting, owning, holding, or trading in securities, and therefore is not an investment company as defined in the Act.

2. Under section 3(a)(3) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investment, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (excluding government securities and cash items) on an unconsolidated basis. Investment securities include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner that are not investment companies.

3. Applicant states that it is primarily engaged in the business of automobile and truck, aerospace and technological systems manufacturing, and other engineering industries through active participation in its wholly-owned subsidiaries, Saab and Scania, and its controlled Engineering Companies, Atlas Copco, Electrolux, Incentive, and SKF. Applicant states that it is not in the business of investing, reinvesting, or trading in securities. Applicant, however, could be considered an investment company under section 3(a)(3) since, at June 30, 1995, 69% of Investor's assets on an unconsolidated basis were composed of investment securities.

4. Rule 3a–1 under the Act provides, in relevant part, that notwithstanding section 3(a)(3), an issuer is not considered an investment company under the Act if no more than 45% of the value of its total assets and no more than 45% of its net income is derived from securities other than government securities, securities issued by employee's securities companies, securities issued by majority-owned subsidiaries that are not investment companies, and securities issued by companies primarily controlled by the issuer that are engaged in non-investment businesses.

5. Presently, Investor could rely on rule 3a–1 to except it from the definition of investment company in section 3(a)(3).[5] The businesses of Investor's

[1] Investor AB, Investment Company Act Release Nos. 18989 (Sept. 30, 1992) (notice) and 19056 (Oct. 27, 1992) (order). The order also found that Investor controlled Astra and STORA, notwithstanding the fact that Investor owned less than 25% of the outstanding voting securities of each company.

[2] Saab consists of five product companies: Saab Military Aircraft, Saab Dynamics, Saab Training Systems, Saab Aircraft, and Saab Combitech.

[3] Formally, Saab remains the owner of 50% of Saab Automobile AB. It is expected, however, that this interest will be transferred to Investor or another Investor subsidiary.

[4] See Touche Remnant & Co. (pub. avail. July 27, 1984).

[5] Under section 3(a)(3), the determination of the value of an issuer's investment securities excludes only government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies. Under rule 3a–1, securities issued by non-investment companies controlled primarily by the issuer through which the issuer engages in non-investment company business are additionally excluded. As well, for purposes of section 3(a)(3),

controlled companies are highly cyclical, however. As a result, Investor is concerned that negative financial results of some of Investor's industrial holdings might make it impossible for Investor to rely on rule 3a–1 in the future. For the same reason, Investor believes that it could not rely on rule 3a–2 under the Act, which excepts certain transient investment companies for a maximum of one year, since an economic downturn affecting Investor's industrial holdings could last more than one year. For these reasons, applicant requests an order under section 3(b)(2) declaring that it is not an investment company.

6. Section 3(b)(2) provides that the SEC may find that an issuer is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses.[6] In determining the primary business in which a company is engaged, the SEC considers, among other factors: (a) The issuer's historical development, (b) the issuer's public representations of policy, (c) the activities of the issuer's officers and directors, (d) the nature of the issuer's present assets, and (e) the sources of the issuer's present income.[7] Investor represents that directly, through its wholly-owned subsidiaries Saab and Scania, and through the Engineering Companies, it is primarily engaged in the business of automobile and truck, aerospace and technological systems manufacturing, and other engineering industries.

a. *Historical Development:* Investor has, over the decades, concentrated its ownership interest in a core group of companies in order to exercise its control and influence. This has resulted in ownership of a relatively small group of companies, because it has often been necessary for Investor to sell off less central core holdings in order to maintain or increase its equity interest in its remaining holdings.

b. Public Representations: Investor represents its policy as one of concentrated, long-term ownership of its core holdings, including active participation on the boards of directors of these companies. Although in the past Investor has sometimes translated its status as a Swedish ''investment bolag'' as ''investment company'' in the English translation of its annual report, ''investment bolag'' does not have the significance under Swedish law that ''investment company'' does under the Act. Under Swedish law,diversified holding companies may elect to be treated as ''investment bolags'' in order to enjoy certain tax advantages. An ''investment bolag,'' however, is distinct from a Swedish ''aktiefound,'' or mutual fund, which corresponds more closely to the definition of investment company under the Act. An ''aktifond'' is subject to percentage limitations on its ownership of any one issuer, limitations which Investors exceeds with respect to many of its holdings. Beginning with its 1991 annual report, Investor described it self as a diversified industrial holding company. From 1994 onwards, Investor intends to describe itself as an industrial investment corporation, a term it believes will have more meaning to its Swedish shareholders.

c. *Activities of Officers and Directors:* The officers and directors of Investor have extensive experience in finance and industry. Several of Investor's officers and directors serve, or have served, as chief executive officers and directors of the Engineering Companies. Investor's officers and directors play a very active role in setting the general policies of these companies, as well as providing support to management. Investor is committed to managing these companies over the long-term. Over the years, members of Investor's board of directors and management have been actively involved in restructuring these companies in order to meet changing market conditions.

d. *Nature of Assets:* As of June 30, 1995, Saab and Scania accounted for approximately 46.6% of the value of Investor's total assets, on a consolidated basis. As of June 30, 1995, the Engineering Companies accounted for approximately 12.1% of the value of Investor's total assets, on a consolidated basis, with each company accounting for approximately the following percentages of Investor's total assets: Incentive 6.0%, Atlas Copco 2.9%, SKF 2.6%, and Electrolux 0.6%. In addition, as of June 30, 1995, Investor held land and real estate used in connection with its manufacturing businesses constituting approximately 1.8% of Investor's total assets. Thus, as of June 30, 1995, Investor's combined interests in Saab, Scania, the Engineering Companies, and its land and real estate holdings represented approximately 60.5% of the value of Investor's total assets.

e. *Sources of Income:* For the six months ending June 30, 1995, Investor obtained approximately 75.8% of its net income after taxes from Saab and Scania. For this same period, Investor obtained approximately 17.0% of its net income after taxes from the Engineering Companies, with each company accounting for approximately the following percentages of net income: Incentive 6.8%, Atlas Copco 4.0%, SKF 5.2%, and Electrolux 1.0%. After accounting for operating losses, interest paid, and a tax adjustment, for the six months ending June 30, 1995, approximately 62.9% of Investor's net income after taxes was derived from revenues from Investor's combined interests in Saab, Scania, and the Engineering Companies.

7. For the reasons discussed above, Investor believes that the SEC should find that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. Investor states that it is in the business of automobile and truck, aerospace and technological systems manufacturing, and other engineering industries through its wholly-owned subsidiaries and controlled Engineering Companies, and that it has a long-term interest in actively controlling these companies. Thus, Investor asserts that it is not the type of company which the Act was meant to regulate.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25822 Filed 10–17–95; 8:45 am]

BILLING CODE 8010–01–M

wholly-owned subsidiaries are considered on an unconsolidated basis, while for purposes of rule 3a–1 they are consolidated with the issuer's directly-held assets.

[6] The requirement that companies be conducting similar types of businesses applies only to controlled companies, and not to majority-owned subsidiaries. *In the Matter of American Manufacturing Company, Inc.* 41 S.E.C. 415, 419 (1963).

[7] *Tonopah Mining Company of Nevada,* 26 S.E.C. 426 (1946).

[Rel. No. IC–21414; 811–7752]

PainWebber Premier Intermediate Tax-Free Income Fund, Inc.; Notice of Application

October 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: PainWebber Premier Intermediate Tax-Free Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 25, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 6, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o Gregory K. Todd, Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, 14th Floor, New York, New York, 10019.

FOR FURTHER INFORMATION CONTACT: Barbara J. Klapp, Paralegal Specialist, at (202) 942–0575, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Applicant is a closed-end management investment company organized as a Maryland corporation. On May 25, 1993, applicant registered under section 8(a) of the Act and filed a Form N–2 under the Securities Act of 1933 to register 4,600,000 shares of common stock. The registration statement became effective on August 19, 1993 and the initial public offering of common stock commenced thereafter.

2. On September 9, 1993, applicant filed a Form N–2 under the Securities Act of 1933, covering 600 auction preferred shares. On October 12, 1993, the registration statement became effective and the initial public offering of auction preferred shares commenced thereafter.

3. On July 12, 1994, applicant's board of directors (the ''Board'') approved an agreement and plan of reorganization and liquidation whereby PainWebber Premier Insured Municipal Income Fund (''Insured Fund'') would acquire all of the applicant's assets and assume all of the applicant's liabilities in exchange for shares of common stock and a new series (Series D) of auction preferred shares of Insured Fund. On November 11, 1994, the Board adopted resolutions to effect the payment of certain dividends and distributions in connection with the reorganization, to take action to delist applicant's shares on the American Stock Exchange and to take such other actions to effect the reorganization.

4. Prospectus/proxy materials were filed with the SEC and were distributed, on or about October 7, 1994, to applicant's securityholders. The reorganization was approved by applicant's shareholders on November 10, 1994.

5. As of November 28, 1994 (the ''Closing Date''), applicant had outstanding 4,496,667 shares of common stock, having an aggregate net asset value of $82,811,775 and a per share net asset value of $11.74, and 600 auction preferred shares, having an aggregate net asset value of $30,000,000 and a per share net asset value of $50,000. There were no other classes of securities of applicant outstanding.

6. On November 28, 1994, applicant declared and paid to its shareholders of common stock a cash distribution, in order to distribute substantially all of its investment company taxable income and realized net capital gain for the 1994 taxable year through the Closing Date. On the Closing Date, Insured Fund acquired all the assets of applicant in exchange solely for shares of Insured Fund common stock and Insured Fund auction preferred shares. The number of shares of Insured Fund common stock issued to applicant had an aggregate net asset value equal to the aggregate value of applicant's assets transferred to Insured Fund as of the Closing Date. The Insured Fund auction preferred shares (Series D) were issued to applicant on the basis of one insured Fund auction preferred share for each of applicant's auction preferred share outstanding as of the Closing Date. On the same date, applicant liquidated and distributed *pro rata* to its shareholders of record the shares of Insured Fund received by applicant in the reorganization.

7. The expenses incurred in connection with the reorganization consisted primarily of legal expenses, printing and mailing expenses, registration fees, and miscellaneous accounting and administrative expenses. These expenses totalled approximately $286,400 and were borne by applicant and Insured Fund in proportion to their respective net assets.

8. As of the date of the application, applicant had no assets, liabilities or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On April 5, 1995, applicant and Insured Fund filed Articles of Transfer with the Department of Assessments and Taxation of Maryland. Applicant intends to file Articles of Dissolution with such office as soon as practicable following its deregistration.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25818 Filed 10–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21416; 812–9766]

United Financial Group, Inc.; Notice of Application

October 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: United Financial Group, Inc. (the ''Company'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act until December 30, 1996. The requested relief would extend an exemption originally granted until December 30, 1990, and extended by subsequent orders until December 30, 1991, December 30, 1992, December 30, 1993, December 30, 1994, and December 30, 1995.

FILING DATES: The application was filed on September 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 6, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5847 San Felipe, Suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0565, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application, The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas (''USAT''). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation (the ''FSLIC'') and its successor, the Federal Deposit Insurance Corporation (the ''FDIC''), which term as used herein includes the FSLIC. The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the ''Net Worth Claim'') and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the ''FDIC Claims''). In addition, the FDIC has asserted the existence of possible other claims (the ''Indemnified Claims'') against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. The Company's attempt to reorganize and seek to acquire an operating business has further been hampered by the existence of certain claims asserted by the Office of Thrift Supervision (''OTS''), whose jurisdiction covers areas not included within the scope of the FDIC's jurisdiction. The OTS is investigating the possibility of certain regulatory violations (the ''OTS Claims'') by the Company and its current and former officers and directors. The Company has been in negotiations with the OTS since September, 1994 concerning possible settlement of the OTS Claims. These claims constitute a substantial contingent liability against the Company's assets.

4. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. In December 1990, however, the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached, Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC staff has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992. This would give the FDIC adequate time to review any possible claims against the Company that might reflect on a global settlement. This tolling agreement was subsequently extended fourteen times, initially through September 30, 1992, then eventually through December 31, 1995.

5. The Company and certain of its officers and directors also entered into tolling agreements with the OTS pursuant to which the OTS would have until the end of the tolling period to allege certain regulatory violations and seek regulatory enforcement. The OTS tolling agreement has been extended to December 31, 1995, subject to the right of the OTS to terminate the tolling agreement upon ten days' notice. During these tolling periods, the Company has engaged in continuous discussions with the OTS and FDIC staffs and as part of that process has furnished the OTS and FDIC staff members with documents and financial records for their review.

6. On June 30, 1995, the Company held assets of approximately $11.52 million, comprised of approximately $.33 million in cash and cash equivalents, $9.54 million in short-term investments, $1.11 million in loans and notes receivable, and $.54 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

7. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The exportation of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990. The SEC extended this exemptive relief by five subsequent orders, most recently until December 30, 1995.[1]

8. As described in detail in the applications for the Prior Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the ''Reorganization Plan'') to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC and the OTS approve a settlement of the FDIC Claims and the OTS Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transactions approved by the bankruptcy court.

[1] Investment Company Act Release Nos. 17941 (Jan. 9, 1991) (notice) and 17989 (Feb. 7, 1991) (order); Investment Company Act Release Nos. 18430 (Dec. 5, 1991) (notice) and 18466 (Dec. 31, 1991) (order); Investment Company Act Release Nos. 19128 (Nov. 25, 1992) (notice) and 19175 (Dec. 22, 1992) (order); Investment Company Act Release Nos. 19839 (Nov. 5, 1993) (notice) and 19916 (Dec. 1, 1993) (order); and Investment Company Act Release Nos. 20545 (Sept. 12, 1994) (notice) and 20608 (Oct. 7, 1994) (order) (the ''Prior Orders'').

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owning investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items). The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. The Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1996. The requested order would extend the exemption granted by the Prior Orders.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as: (a) whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. The Company believes that it meets these criteria.

4. The Company believes that its failure to become primarily engaged in a non-investment business by December 30, 1995 is a result of factors beyond its control. The existence of the FDIC Claims and the OTS Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the OTS Claims and the potential threat that the FDIC and the OTS would seek to enjoin any utilization of the company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims and the OTS Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company believes that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims and the OTS Claims make it necessary for the Company to seek relief extending the relief granted by the Prior Orders. This would allow the Company to seek an FDIC and OTS settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the tax loss.

7. The Company believes that the issuance of an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1996 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a–7(a)(10) under the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) if the Company become subject to the jurisdiction of the bankruptcy court, the Company needed not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) the Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an ''investment company'' provided that (i) no cash payments are made to an ''affiliated person'' (as defined in the Act) of the Company as part of such transaction or series of transactions, and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f–2

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25819 Filed 10–17–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new information collection.

DATES: Comments should be submitted on or before December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of this collection can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Characteristics of High-Technology Firms Study.

Type of Request: New Information Collection.

Description of Respondents: Small and large high-technology businesses.

Burden Per Response: 30 minutes.

Annual Responses: 960.

Annual Burden: 500.

Comments: Send all comments regarding this information collection to Edward Starr, Small Business Administration, Office of Advocacy, 409 3rd Street, S.W., Suite 5800, Washington, D.C. 20416. Phone Number: 202–205–6530. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Georgia Greene,

Chief, Administrative Information Branch.

[FR Doc. 95–25832 Filed 10–17–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2812]

Commonwealth of Puerto Rico; Declaration of Disaster Loan Area (Amendment #1)

The above numbered Declaration is hereby amended, effective September 22, 1995 to close the incident period and effective September 24, 1995 to include the Municipalities of Aquas Buenas, Barranquitas, Canovanas, Carolina, Fajardo, Juncos, Loiza, Naquabo, Caiba, and Comerio in the Commonwealth of Puerto Rico as a disaster area due to damages caused by Hurricane Marilyn which occurred September 15 through September 17, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities of Aibonito, Bayamon, Caguas, Cidra, Coamo, Corozal, Guaynabo, Gurabo, Humacao, Las Piedras, Luquillo, Naranjito, Orocovis, Rio Grande, San Lorenzo, San Juan, and Trujillo Alto in the Commonwealth of Puerto Rico may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 14, 1995, and for loans for economic injury, the deadline is June 17, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 12, 1995.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–25834 Filed 10–17–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2811]

U.S. Territory of the Virgin Islands (Amendment #1)

The above numbered Declaration is hereby amended, effective September 22, 1995 to show the incident period for this disaster as September 15 through September 17, 1995.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 14, 1995, and for loans for economic injury the deadline is June 17, 1995 at the previously designated location.

(Catolog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 12, 1995

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–25833 Filed 10–17–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 6, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–705.
Date filed: October 5, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1800 dated September 15, 1995. Within Middle East Resos r-1 to r-8.
Proposed Effective Date: April 1, 1996.

Docket Number: OST–95–706.
Date filed: October 5, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/P dated October 3, 1995 North/Mid/South Atlantic Expedited Resos r-1 to r-16.
Proposed Effective Date: December 1, 1995.

Docket Number: OST–95–707.
Date filed: October 5, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P 1073 dated October 3, 1995. TC3–Central/South America Expedited Resos r-1 to r-5. TC31 Reso/P 1079 dated October 3, 1995. TC31 North & Central Pacific (Except US) Reso r-6.
Proposed Effective Date: December 1, 1995

Docket Number: OST–95–708.
Date filed: October 5, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P 1072 dated October 3, 1995 r-1 to r-11.TC3 (except Japan)—North America Expedited Resos. TC31 Reso/P 1074 dated October 3, 1995 r-12 to r-13. Japan-North America/Caribbean Expedited Resos. TC31 Reso/P 1075 dated October 3, 1995.
Proposed Effective Date: December 1, 1995

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–25796 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 6, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–703.
Date filed: October 4, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify: November 1, 1995.
Description: Application of AlphaJet International, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q for a certificate of public convenience and necessity authorizing interstate charter air transportation pursuant to Section 41102 of Title 49 of the United States Code.

Docket Number: OST–95–702.
Date filed: October 3, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify: October 31, 1995.
Description: Application of LorAir, Ltd. for a certificate of public convenience and necessity pursuant to Subpart Q under Section 401(d)(1) of the Act to engage in foreign charter air transportation.

Docket Number: OST–95–709.
Date filed: October 6, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.
Description: Application of Northwest Airlines, Inc. pursuant to Notice served September 22, 1995, applies for authorization to operate two additional frequencies of scheduled foreign air transportation of passengers, property and mail between Minneapolis/St. Paul, Minnesota, on the one hand, and Vancouver, Canada, on the other.

Docket Number: OST–95–710.
Date filed: October 6, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.
Description: Application of American Airlines, Inc. pursuant to 49 U.S.C.

Section 41108 and Subpart Q, applies for a certificate of public convenience and necessity authorizing foreign air transportation of persons, property, and mail between New York and Vancouver and between Miami and Vancouver.

Docket Number: OST–95–711.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 41101, and Subpart Q, applies for a certificate of public convenience and necessity for authority to offer scheduled foreign air transportation of persons, property and mail between the following city-pairs:

(1) Denver, Colorado—Vancouver, British Columbia, Canada; and

(2) Los Angeles, California—Vancouver, British Columbia, Canada.

Docket Number: OST–95–714.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of Aerovias Nacionales Ecuatorianas Manabitas, S.A. pursuant to 49 U.S.C. 41301, and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between points in Ecuador and points in the United States, together with authority to operate fifth freedom cargo charter transportation between points in the United States and points in third countries in accordance with Part 212 of the Department's Economic Regulations.

Docket Number: OST–95–715.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of America West Airlines, Inc. pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, seeks a certificate of public convenience and necessity authorizing it to provide scheduled combination service between Las Vegas, Nevada, on the one hand, and Vancouver, British Columbia, on the other hand, as provided for in the Bilateral.

Docket Number: OST–95–716.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of Alaska Airlines, Inc. pursuant to 49 U.S.C. 41101, and Subpart Q of the Regulations, requests certificate of public convenience and necessity authorizing it to engage in the scheduled foreign air transportation of persons, property and mail between San Diego, California, on the one hand, and Vancouver, British Columbia, Canada, on the other hand.

Docket Number: OST–95–718.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of Wolf International Airlines, Inc. pursuant to Subpart Q pursuant to 49 U.S.C. 41101 and 41102 and Subpart Q of the Regulations for the issuance of a certificate of public convenience and necessity for interstate air transportation.

Docket Number: OST–95–719.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of Wolf International Airlines, Inc. pursuant to 49 U.S.C. 41101 and 41102 and Subpart Q for the issuance of a certificate authorizing it to engage in scheduled foreign air transportation of persons, property and mail.

Docket Number: OST–95–717.

Date filed: October 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: November 3, 1995.

Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. 41101 and 41108, and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation between Cincinnati, Ohio and Vancouver, British Columbia, Canada and between Atlanta, Georgia and Vancouver, British Columbia, Canada.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–25797 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–62–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that The Industrial Bank of Japan Trust Company, with offices at 245 Park Avenue, New York, New York 10167, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: October 12, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Acting Secretary,

[FR Doc. 95–25795 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–81–P

[Docket S–924]

Mormac Marine Transport, Inc.; Notice of Application for Written Permission to Section 805(a) of the Merchant Marine Act, 1936, As Amended

Mormac Marine Transport, Inc. (Mormac) by letter of October 3, 1995, corrected by letter of October 5, 1995, requests, pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act) and Article II–13 of Operating-Differential Subsidy Agreement (ODSA) Contracts MA/MSB–295(b) and MA/MSB–295(c), written permission (1) effective December 10, 1995, to own, operate, and charter its vessel MORMACSTAR, Official No. 569257, in the domestic intercoastal or coastwise service and (2) effective June 23, 1996, to own, operate, and charter its vessel MORMACSUN, Official No. 573770, in such service, both as herein stated.

Mormac operates the MORMACSTAR, MORMACSUN, and MORMACSKY, sister ships, in subsidized essential bulk cargo carrying services in foreign commerce as provided in ODSAs Contracts MA/MSB–295(a), MA/MSB–295(b), and MA/MSB–295(c). These vessels were built at San Diego, California, with construction-differential subsidy (CDS) and delivered on December 10, 1975, June 23, 1976, and February 2, 1977, respectively, and began subsidized operations under the ODSAs on those dates, respectively. The ODSAs will terminate 20 years after the commencement of the subsidized operations of the respective vessels, i.e., No. MA/MSB–295(a), December 9, 1995; No. MA/MSB–295(b), June 22, 1996; and No. MA/MSB–295(c), February 1, 1997. On the same dates the respective vessels' obligation to operate in foreign commerce as provided pursuant to section 506 of the Act in the CDS contract under which they were built will expire.

On December 10, 1995, the MORMACSTAR will cease to earn operating-differential subsidy (ODS) (except insofar as it is eligible to share subsidy with the MORMACSKY under Contract MA/MSB–295(c) pursuant to the Maritime Subsidy Board's action of September 14, 1995, in Docket S–923, as discussed below). On June 23, 1996, the MORMACSUN will cease to earn subsidy (also with the exception of its

eligibility to share subsidy with the MORMACSKY under the September 14, 1995, action). On the same dates respectively, Mormac wishes to operate these vessels in coastwise and intercoastal trades. The continuation of subsidy under Contract Nos. MA/MSB–295(b) and MA/MSB–295(c) until June 23, 1996, and February 2, 1997, respectively, however, will necessitate Mormac's receiving permission under section 805(a) for the MORMACSTAR and the MORMACSUN to undertake domestic operations, since section 805(a) forbids the payment of subsidy to a contractor who owns, operates, or charters a vessel in domestic coastwise or intercoastal service without such permission.

The three subsidized vessels are steam tankers of about 39,300 DWT, suitable primarily for the carriage of petroleum products.

Mormac states that it hopes to seek employment on the spot market in domestic trade for the MORMACSTAR after December 9, 1995, and for the MORMACSUN after June 22, 1996, perhaps lifting petroleum products from the U.S. gulf or the west coast. Mormac notes that in these trades, protected by the Jones Act, most competitors' vessels are steam powered, and their average age is comparable to the MORMACSTAR's and MORMACSUN's so that they will be on a more level competitive footing. In this connection, Mormac points out that its vessels are well equipped and maintained, and in capacity, speed, and condition they will be well suited to the proposed trade.

Mormac believes that the permission requested will not result in unfair competition to anyone operating exclusively in the coastwise or intercoastal service nor be contrary to the objects and policy of the Act. The permission sought, Mormac explains, will be requisite only so long as the MORMACSUN or MORMACSKY is receiving ODS; which will be only a little more than a year, from December 10, 1995, until February 1, 1997, at the latest, in the case of the MORMACSTAR; and the MORMACSUN will not be engaging in the domestic trade until June 23, 1996, at the earliest, so that the permission to do so will be needed for only about seven months. According to Mormac, competition, if any, between the MORMACSTAR and MORMACSUN and other vessels now or hereafter serving the domestic petroleum products trade will be on a fair footing unaffected by ODS payments to Mormac. Mormac further believes the permission will further the accomplishment of objects and policies of the Act by helping keep in active service two well equipped, safe, and suitable vessels carrying domestic oceanborne commerce and capable of serving as a military and naval auxiliary.

The application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest (within the meaning of section 805(a)) in Mormac's request and desiring to submit comments concerning the request must by 5:00 PM on October 30, 1995, file written comments in triplicate with the Secretary, Maritime Administration, together with a petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) would result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.805 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: October 12, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–25755 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–62; Notice 2]

Decision That Nonconforming 1993 BMW 525i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 BMW 525i passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 BMW 525i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1993 BMW 525i), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of October 18, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Northern California Diagnostic Laboratories, Inc. of Napa, California (Registered Importer R–92–011) petitioned NHTSA to decide whether 1993 BMW 525i passenger cars are eligible for importation into the United States. NHTSA published notice of the

petition on August 10, 1995 (60 FR 40880) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–133 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1993 BMW 525i not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 BMW 525i originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–25793 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–70; Notice 2]

Decision that Nonconforming 1992, 1993, and 1994 General Motors Suburban Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992, 1993, and 1994 General Motors Suburban multi-purpose passenger vehicles (MPVs) manufactured in Mexico are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992, 1993, and 1994 General Motors Suburban MPVs manufactured in Mexico that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1992, 1993, and 1994 General Motors Suburban MPV), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective as of October 18, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to decide whether 1992, 1993, and 1994 General Motors Suburban MPVs manufactured in Mexico are eligible for importation into the United States. NHTSA published notice of the petition on August 14, 1995 (60 FR 41907) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–134 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1992, 1993, and 1994 General Motors Suburban MPVs manufactured in Mexico that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 and 1993, and 1994 General Motors Suburban MPVs originally manufactured for sale in the United States and certified under 49 U.S.C 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–25794 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet in Room 600, 301 4th Street, S.W., on October 18, 1995.

The meeting will be closed to the public because it will involve discussion of classified information relating to public diplomacy and new U.S. measures to support the Cuban people and strengthen civil society in Cuba. The Commission will meet with Mr. Steve Chaplin, Director, Office of Inter-American Affairs, USIA, and Mr. Eugene Bigler, Coordinator of USIA's Cuba Programs Working Group. (5 U.S.C. 552b(c)(1))

Please call Betty Hays, (202) 619–4468, for further information.

Joseph Duffey,

Director.

Dated: October 12, 1995.

Determination To Close Advisory Commission Meeting of October 18, 1995

Based on the information provided to the United States Information Agency by the United States Advisory Commission on Public Diplomacy, I hereby determine that the meeting scheduled by the Commission for October 18, 1995 may be closed to the public.

The Commission has requested that its October 18 meeting be closed, because it will involve discussion of classified information relating to public diplomacy and new U.S. measures to support the Cuban people and strengthen civil society in Cuba. The Commission will meet with Mr. Steve Chaplin, Director, Office of Inter-American Affairs, USIA, and Mr. Eugene Bigler, Coordinator of USIA's Cuba Programs Working Group. (5 U.S.C. 522b(c)(1))

Dated: October 12, 1995.

Joseph Duffey,

Director.

[FR Doc. 95–25827 Filed 10–17–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 201
Wednesday, October 18, 1995

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 HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 9:00 a.m., Wednesday, October 25, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Comprehensive Review of the Financial Management Policy.
- Proposed Rule: FHLBank Restrictions on AHP Applications.

MATTERS TO BE CONSIDERED DURING PORTIONS CLOSED TO THE PUBLIC:

- Review of the FHLBank of San Francisco's Tiered Advance Pricing Policy.
- Review of the FHLBank of San Francisco's Calcuation of Affordable Housing Program (AHP) Subsidies on Guaranteed Rate Advances.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–25919 Filed 10–16–95; 10:34 am]

BILLING CODE 6725–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10.00 a.m., Thursday, October 19, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Doss Fork Coal Co.,* Docket No. WEVA 93–129 (Issues include whether the judge erred in his determination of four alleged violations relating to 30 C.F.R. §§ 75.202(a), .202(b), .305, & .400.)

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/for toll free TDD Relay 1–800–877–8339.

Dated: October 12, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–25917 Filed 10–16–95; 10:06 am]

BILLING CODE 6735–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–95–024

TIME AND DATE: October 20, 1995 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–738 (Preliminary) (Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–25897 Filed 10–13–95; 5:06 pm]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–95–025

TIME AND DATE: October 27, 1995 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–725 (Final) (Manganese Sulfate from China)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–25898 Filed 10–13–95; 5:06 pm]

BILLING CODE 7020–02–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. § 552(b)), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service:

DATE AND TIME: Monday, October 23, 1995, 10:00 a.m. to 3:00 p.m.

PLACE: Corporation for National Service, Room 8410, 1201 New York Avenue NW, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda

I. Welcome and Report of the Chairman
II. Report of the CEO
III. Approval of Minutes from the June 1995 Meeting
IV. Reports of Standing Committees
  A. Communications/Outreach
  B. Management, Budget and Governance
  C. Planning and Evaluation
V. Report on New Partnerships and Initiatives
  A. American Red Cross
  B. Federal Emergency Management Agency
  C. Points of Light Foundation
  D. Innovative programs under Division H.
  E. Olympics and Paralympics
  F. Senior Corps Conference
VI. Report on State Commissions
VII. Models for Volunteer Generation
  A. Report of Best Practices from a Panel of Program Representatives
VIII. Public Comment
Adjournment

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the Corporation by October 19, 1995.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW, Washington, D.C. 20525. Phone (202) 606–5000 ext.

282. (202) 606–5256 (T.D.D.). Fax (202) 565- 2794.

Dated: October 16, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–25950 Filed 10–16–95; 1:32 pm]

BILLING CODE 6050–28–P

Federal Register

Wednesday
October 18, 1995

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 22

Federal Reserve System

12 CFR Part 208

Federal Deposit Insurance Corporation

12 CFR Part 339

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563 and 572

Farm Credit Administration

12 CFR Part 614

National Credit Union Administration

12 CFR Part 760

Loans in Areas Having Special Flood Hazards; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 95–24]

RIN 1557–AB47

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R–0897]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AB66

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 572

[No. 95–179]

RIN 1550–AA82

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB57

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are proposing to amend their regulations, and the Farm Credit Administration (FCA) is proposing to issue new regulations, regarding loans in areas having special flood hazards. This action is required by statute and is intended to implement the provisions of the National Flood Insurance Reform Act of 1994. Among other statutorily mandated provisions, the proposal would establish new escrow requirements for flood insurance premiums, explicit authority and the requirement for lenders and servicers to ''force-place'' flood insurance under certain circumstances, enhanced flood hazard notice requirements, and new authority for lenders to charge fees for determining if a property is located in a special flood hazard area.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–24. Comments may be inspected and photocopied at the same location. In addition, comments may be sent by facsimile transmission to FAX number 202/874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, Attention: Docket No. R–0897, or delivered to room B–2222, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board of Governors' rules regarding availability of information, 12 CFR 261.8.

FDIC: Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be delivered to Room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. or sent by facsimile transmission to FAX number 202/898–3838. Internet: COMMENTS@FDIC.GOV. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 8:30 a.m. and 5:00 p.m. on business days.

OTS: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 95–179. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days or may be sent by facsimile transmission to FAX number (202/906–7755). Comments will be available for inspection at 1700 G Street NW., from 1:00 p.m. until 4:00 p.m., on business days.

FCA: Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all comments will be available for examination by interested parties in Regulation Development, Office of Examination, Farm Credit Administration.

NCUA: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments will be available for inspection at the same location. Send comments to Ms. Baker via the bulletin board by dialing 703/518–6480. Send one copy by U.S. mail or fax to FAX number 703/518–6319.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist (202/874–4858), Compliance Management; Margaret Hesse, Attorney, Community and Consumer Law Division (202/874–5750), Jacqueline Lussier, Senior Attorney, or Saumya Bhavsar, Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of Chief Counsel.

Board: Diane Jackins, Senior Review Examiner, Jennifer Lowe, Review Examiner (202/452–3946), Division of Consumer and Community Affairs; Lawranne Stewart, Senior Attorney (202/452–3513), or Rick Heyke, Attorney (202/452–3688), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

FDIC: Mark Mellon, Senior Attorney, Regulation and Legislation Section (202/898–3854), Legal Division, or Ken Baebel, Senior Review Examiner (202/942–3086), or Barbara L. Boehm, Consumer Affairs Specialist (202/942–3631), Division of Compliance and Consumer Affairs.

OTS: Larry Clark, Program Manager, Compliance and Trust, Compliance Policy (202/906–5628); Catherine Shepard, Senior Attorney, Regulations and Legislation Division (202/906–7275), Office of Chief Counsel.

FCA: Robert G. Magnuson, Policy Analyst, Regulation Development (703/883–4498), Office of Examination; or William L. Larsen, Senior Attorney, Regulatory Operations Division (703/883–4020), Office of General Counsel. For the hearing impaired only, TDD (703/883–4444).

NCUA: Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance; or Jeffrey

Mooney, Staff Attorney (703/518–6563), Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Riegle Community Development and Regulatory Improvement Act, Pub. L. 103–325, 108 Stat. 2160 (CDRI Act), which the President signed into law on September 23, 1994, comprehensively revised the Federal flood insurance statutes. The flood insurance provisions of the CDRI Act require the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations. The FCA is required to promulgate flood insurance regulations for the first time. The six agencies are issuing this proposal jointly in order to fulfill these statutory requirements. All six of the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain of the CDRI Act flood insurance provisions.[1]

This preamble first briefly describes the National Flood Insurance Program (NFIP), then highlights the CDRI Act amendments to it that are of significance to the institutions supervised by the six agencies. Institutions are encouraged to consult the CDRI Act for further detail about the provisions described here as well as for amendments to the NFIP that do not require rulemaking by the six agencies.[2]

Following the description of the statutory background is a discussion of the substance of the proposed regulations. The agencies' proposals are substantively consistent, although the format of the regulatory text varies in order to accommodate the format currently in use at each agency.[3] With respect to flood insurance regulations, these proposals satisfy the statutory obligations of the OCC, Board, FDIC, and OTS under section 303(a) of the CDRI Act. That section requires each of these agencies to review and streamline its regulations and to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

B. The National Flood Insurance Program

The NFIP is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act). These statutes are codified at 42 U.S.C. 4001–4129.[4] The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the NFIP. A special flood hazard area (SFHA) is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year.[5] SFHAs are delineated on maps issued by FEMA for individual communities.[6] A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.[7]

The 1973 Act amended the NFIP by requiring the OCC, Board, FDIC, OTS, and NCUA to issue regulations governing the lending institutions they supervise. The regulations directed lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (security property) if the security property was located in a SFHA in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that security property is located in a SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

C. CDRI Act Amendments

Title V of the CDRI Act, the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revises the NFIP. The Reform Act is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[8]

The Reform Act changed some of the terms used to refer to regulators and entities subject to the NFIP. The Reform Act refers to the six regulators collectively as the Federal entities for lending regulation. This preamble discussion refers to the six regulators as the Federal entities for lending regulation or the agencies. The Reform Act, and this preamble discussion, refer to the institutions supervised by the six agencies collectively as regulated lending institutions or lenders.[9]

The following provisions of the Reform Act are especially significant to regulated lending institutions. References to the appropriate sections of the CDRI Act are given in parentheses.

Scope of coverage (sections 511, 512, 522). The Reform Act expanded the scope of coverage of the NFIP in several ways. First, it added the FCA to the list of regulators covered by the NFIP and added Farm Credit banks and other lenders supervised by the FCA to the list of covered financial institutions.

Second, the Reform Act directed the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to implement procedures ''reasonably designed to ensure'' that property securing the residential mortgage loans they purchase is covered by flood insurance if the security property is located in a SFHA in a community that participates in the NFIP. Thus, entities not directly covered by Federal flood insurance laws will indirectly be required to satisfy the statutory flood insurance requirements if they sell residential mortgage loans to Fannie Mae or Freddie Mac.

Third, as discussed more fully below, some of the Reform Act's provisions apply to loan servicers. The Reform Act defines the term servicer to include any person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing a loan, and making the payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

Dates of Applicability. Except for the standard flood hazard determination

[1] The heads of five of the six agencies (OCC, Board, FDIC, OTS, and NCUA) comprise the membership of the FFIEC.

[2] *See, e.g.*, CDRI Act sections 521 (flood insurance purchase requirement for Federal disaster relief recipients may not be waived), 522 (Federal agency lenders subject to provisions of statute), 573 (increase in maximum flood insurance coverage amounts), 579 (delay of effective date of flood insurance policies), and 582 (flood disaster assistance barred in certain circumstances; duty to provide certain notices on transfer of property).

[3] This proposal is also a component of the OCC's Regulation Review Program. Each of the agencies involved in this rulemaking is engaged in a similar effort to reduce unnecessary regulatory burden and to simplify and clarify its regulations.

[4] The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 50–79 (1995).

[5] 44 CFR 59.1.

[6] 44 CFR part 65.

[7] 44 CFR part 60.

[8] H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 195 (1994) (Conference Report).

[9] In the statute, the term lender also refers to a Federal agency lender, which means a Federal agency that makes direct loans secured by improved real estate or a mobile home. This proposal does not apply to Federal agency lenders. *See* CDRI Act sections 511, 512, 522.

form and escrow provisions described later in this preamble, the flood insurance provisions in the Reform Act that apply to insured banks, savings associations, and credit unions took effect on September 23, 1994, the date of enactment of the Reform Act. The Reform Act specifically provides that the regulations implementing the flood insurance purchase requirement promulgated by the OCC, Board, FDIC, OTS, and NCUA that were in effect immediately before the date of enactment remain in effect until these agencies issue the new rules that the Reform Act requires. Thus, loans in compliance with the agencies' existing flood insurance rules that are made before new rules are finalized do not violate the requirements imposed by Federal flood insurance laws.

The statutory provisions that apply to Fannie Mae and Freddie Mac take effect on September 23, 1995. Unlike the regulated lending institutions supervised by the other Federal entities for lending regulation, Farm Credit System (System) institutions were not part of the NFIP before passage of the Reform Act and are not subject to any current flood insurance regulations. In section 522 of the Reform Act, Congress made clear that System participation in the NFIP would not be required for a minimum of one year after enactment of the Reform Act, thus ensuring a transition period for integration of the System into the NFIP.

As set forth below, a number of the Reform Act provisions require agency implementing regulations. These regulations will establish the basic framework for participation by System institutions in the NFIP. While it could be argued that System institutions should be required to comply as of September 23, 1995, with applicable statutory requirements of the Reform Act that do not require FCA regulations, the FCA believes that piecemeal applicability of Reform Act requirements before the fundamental regulatory framework envisioned by Congress is in place might be unfairly burdensome to institutions and unnecessarily difficult for the FCA to enforce.

Further, the FCA believes that System lenders should have the opportunity to comment on NFIP implementing regulations before their requirements go into effect. Accordingly, the FCA will not criticize System institutions in examinations for failure to follow the requirements of the Reform Act until FCA implementing regulations are effective. Notwithstanding this interpretation of Reform Act applicability, to ensure a smooth integration of the System into the NFIP, the FCA encourages System lending institutions to initiate adequate preparations so that their lending activities will comply with NFIP requirements by the time final flood insurance regulations are adopted.

Flood insurance requirement (section 522). Under the 1973 Act, regulated lending institutions could not ''make, increase, extend, or renew'' any loan secured by improved real estate or a mobile home located in a SFHA in a participating community unless the security property and any personal property securing the loan was covered for the life of the loan by flood insurance. The Reform Act continues this basic requirement but adds a new exemption for small, short-term loans—those with an original principal balance of $5,000 or less and a repayment term of one year or less.

Escrow of flood insurance payments (section 523). The Reform Act directs the agencies to issue rules imposing a new escrow requirement for flood insurance payments. Under these rules, a regulated lending institution that requires the escrow of taxes, property insurance premiums, fees, or other charges for a loan secured by residential improved real estate must require the escrow of flood insurance premiums and fees as well. Loans secured by commercial property are not subject to this escrow requirement.

Forced placement of flood insurance (section 524). The 1973 Act did not expressly authorize lenders to purchase—or force place—flood insurance on behalf of a borrower. The Reform Act explicitly confers forced placement authority on both lenders and servicers, and requires lenders and servicers to force place insurance under certain circumstances. If, at the time of origination or at any time during the term of a loan, the lender or servicer determines that the security property and any personal property securing the loan lack adequate flood insurance coverage, the lender or servicer must notify the borrower of the borrower's responsibility to obtain coverage at the borrower's expense. If the borrower fails to purchase flood insurance within 45 days after that notification, the lender or servicer must purchase the insurance on the borrower's behalf.

The forced placement authority and requirement are self-implementing, and apply to all loans outstanding on or after September 23, 1994.[10] In forced placement situations, the lender or servicer may pass the cost of the insurance—premiums and fees—on to the borrower.

The Reform Act also provides procedures for the resolution of disputed flood hazard determinations that would trigger the mandatory purchase requirement. At the joint request of the borrower and regulated lending institution, the Director of FEMA will review the determination and within 45 days make the final decision whether or not the building or mobile home is located in an area having special flood hazards. Review of a flood insurance determination may be requested whenever a determination occurs, either at origination or at any time during the term of the loan. FEMA published a notice of proposed rulemaking with respect to these procedures on June 15, 1995, 60 FR 31442. The comment period closed on August 15, 1995.

Penalties (section 525). The Reform Act authorizes the appropriate Federal entity for lending regulation to impose civil money penalties against a regulated lending institution that engages in a pattern or practice of violating the flood insurance statute or regulations. Notice and opportunity for hearing are required before civil money penalties may be imposed. Penalties may be assessed in amounts of up to $350 for each violation, not to exceed $100,000 per calendar year, for any single regulated lending institution.

The agencies note that liability for civil money penalties remains with the regulated lending institution that committed the violation. Transfer of the loan does not extinguish the liability of the transferring lender; conversely, the transferee is not liable for violations committed by another lender that previously held the loan.

The agencies also note that a lender that purchases or renews flood insurance in the appropriate amount on a borrower's behalf under the statute's forced placement provisions is deemed by the express language of the statute to have complied with the agencies' regulations requiring lenders to ensure adequate coverage on security property located in a SFHA.

Flood determination fees (section 526). The 1973 Act did not expressly authorize regulated lending institutions to charge borrowers for the cost of making a flood insurance determination. The Reform Act provides that any person making a loan secured by improved real estate or a mobile home, or any servicer for such a loan, may charge a reasonable fee for the costs of determining whether the building or mobile home is located in a SFHA. The

[10] With regard to the timing of the applicability of this requirement to System institutions, *see* discussion under ''Dates of applicability,'' *supra.*

lender or servicer acting on behalf of the lender may charge the determination fee to the borrower or, in the case of a loan transfer or sale, the loan purchaser under prescribed circumstances. These include when the determination (1) is made in connection with the making, increasing, extending, or renewing of the loan that the borrower initiates, (2) is made in response to map changes by FEMA, or (3) results in the purchase of flood insurance under the forced placement provisions.

Notice requirements (section 527). The 1968 Act, as amended, required regulated lending institutions to provide notice to purchasers or lessees if the property securing the loan is located in a SFHA. The Reform Act further amends the 1968 Act: (1) to add detail to the required contents of the notice; (2) to require regulated lending institutions to give notice of special flood hazards to loan servicers, as well as to purchasers or lessees; and (3) to require lenders to notify FEMA of the identity of the servicer of a loan subject to flood insurance requirements and of the identity of the new servicer if there is a change in loan servicers.

The Reform Act also requires the Director of FEMA (or the Director's designee) to provide advance notice of the expiration of any flood insurance contract to the owner of the property covered by the contract, the loan servicer of any loan secured by such insured property, and (if known to the Director) the owner of the loan.

Standard flood hazard determination form (section 528). The Reform Act requires FEMA to develop a standard form for recording a lender's determination whether security property for a given loan is located in a SFHA for which flood insurance is available. The Reform Act mandates that the form be developed by regulations issued 270 days after September 23, 1994, the date of enactment. FEMA published a notice of proposed rulemaking with respect to the form on April 7, 1995, 60 FR 17758, and a final rule on July 6, 1995, 60 FR 35276. FEMA's final rule was effective upon publication in the Federal Register.

The Reform Act also requires the Federal entities for lending regulation to issue regulations requiring regulated lending institutions to use the standard form developed by FEMA. The Reform Act mandates that the agencies' regulations be issued together with FEMA's rule establishing the form. The agencies published a final rule that complies with this statutory requirement on July 6, 1995. 60 FR 35286. Under this rule, as mandated by the Reform Act, regulated lending institutions must use the form beginning 180 days after the issuance of the rule, or January 2, 1996.

Examination regarding compliance (section 529). The Reform Act requires each appropriate Federal entity for lending regulation to assess compliance with the NFIP when it conducts examinations of the regulated lending institutions it supervises. The OCC, Board, FDIC, OTS, and NCUA are required to report to Congress on compliance by insured depository institutions and insured credit unions with the requirements of the NFIP. The FCA has authority under the Farm Credit Act (12 U.S.C. 2001–2279bb–6) to assess compliance by Farm Credit System institutions with the NFIP.

Availability of flood maps (section 575). Under the Reform Act, FEMA must make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation (and certain other governmental entities) and at a reasonable cost to all other persons. FEMA also must provide notice of any change to flood insurance map panels, including changes effected by letter of map amendment or letter of map revision, not later than 30 days after the map change or revision becomes effective. FEMA must either publish this notice in the Federal Register or provide notice by another, comparable method. Finally, every six months FEMA must publish a compendium of all changes and revisions to flood insurance map panels and all letters of map amendment and revision for which it published notice during the preceding six months. These compendia are available free of charge to the Federal entities for lending regulation (and certain other governmental entities) and for a fee set by FEMA to all other persons.

II. Description of the Proposal

A. Overview

The Reform Act directs the Federal entities for lending regulation to write regulations implementing certain of its provisions and specifies their content. The OCC, Board, FDIC, OTS, and NCUA are proposing to revise their current flood insurance regulations [11] to reflect the changes required by the Reform Act. The FCA is proposing new flood insurance regulations for the institutions it regulates. All of the agencies were mindful of the need to keep regulatory burden to a minimum as they prepared this proposal, and, accordingly, are proposing only regulatory requirements necessary to implement the Reform Act.

The purpose of the Reform Act is to strengthen and enhance the NFIP. It does not focus on the safety and soundness of financial institutions. Depending on the location and activities of a lender, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. Accordingly, this preamble notes issues that may raise safety and soundness concerns in some circumstances and invites comment on these issues so that the agencies can consider whether to provide informal guidance, separate from these implementing regulations, that addresses safe and sound banking practices with respect to flood insurance.

In deciding whether guidance of this type is appropriate, the agencies will consider the fact that a lender's needs with respect to flood insurance vary widely depending on the type of lending the institution does and the geographic areas it serves. Therefore, each lender is generally in the best position to tailor its flood insurance policies and procedures to suit its business. The agencies encourage lenders to evaluate and, when necessary, modify their flood insurance programs to comport with both the requirements of Federal flood insurance laws and regulations and principles of safe and sound banking.

B. Topic-by-Topic Discussion

Authority, Purpose and Scope

The agencies have expanded this section to add detailed statements of authority, purpose and scope. The FCA is proposing language similar to that proposed by the other agencies. The NCUA is proposing to replace the current question and answer format of its flood insurance regulations with standard regulation text so that its flood insurance regulations are consistent with the other agencies.

Loan Servicers

The agencies propose to apply their regulations implementing the escrow, forced placement, and flood hazard determination fee provisions of the Reform Act to regulated lending institutions and to loan servicers acting on behalf of regulated lending institutions. The agencies propose to cover loan servicers in this way for several reasons. First, the agencies do

[11] OTS's current flood insurance regulation is codified at 12 CFR 563.48. For ease of reference, the OTS is creating a new part 572 for its flood insurance regulation and repealing 12 CFR 563.48.

not have jurisdiction over all servicers. Some servicers are not regulated lending institutions or their affiliates.

Second, the agencies do not interpret the NFIP to impose obligations on loan servicers independent from the obligations it imposes on the owner of a loan.

The NFIP looks to activities that are conducted by lenders rather than loan servicers—that is, the making, increasing, extending, or renewing of a loan—as the triggers for ensuring adequate flood insurance coverage. The mandatory purchase requirement under section 102 of the 1973 Act (42 U.S.C. 4012a(b)) applies only to lenders.

Moreover, the Conference Report indicates that a principal reason for the adoption of the forced placement provision was to remove any doubt that lenders have the legal authority to require borrowers to purchase flood insurance or, if the lender purchases the insurance, to require the borrower to pay for it. Conference Report at 199. The agencies conclude that loan servicers were covered by the provision so that they could perform for the lender the administrative tasks related to the forced placement of flood insurance—including providing the requisite notices to borrowers, arranging for the insurance, and collecting and transmitting insurance premiums—without fear of liability to the borrower for the imposition of unauthorized charges.

Finally, section 102(f) of the 1973 Act (42 U.S.C. 4012a(f)) as added by section 525 of the CDRI Act does not authorize the agencies to seek civil money penalties against loan servicers that are not regulated lending institutions. The statute's failure to impose liability on servicers independent of lenders reinforces the conclusion that a servicer's obligation to comply with NFIP requirements arises from its contractual relationship with a lender. A lender thus may fulfill its duties under the NFIP by imposing its responsibilities on the servicer under a servicing contract. Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will take all necessary steps with respect to escrow requirements, forced placement of flood insurance, flood hazard determinations, and notices if the lender or its servicer should determine that there are deficiencies in any of these aspects of servicing agreements.

Definitions

The agencies have added or revised certain definitions, including definitions of the terms ''building,'' ''designated loan,'' [12] ''mobile home,'' and ''servicer.'' The agencies also added certain definitions that enable them to streamline the operative provisions of the regulation, including definitions of the terms ''Director,'' ''residential improved real estate,'' and ''special flood hazard area.''

Flood Insurance Requirement

The Reform Act did not change the basic requirement for the purchase of flood insurance when a security property is located in a special flood hazard area in a participating community, nor did it modify the minimum required amount of the insurance.[13] The minimum amount continues to be the lesser of the amount of the outstanding principal balance of the loan or the maximum limit for coverage under the 1968 Act.[14] Accordingly, the five agencies that currently have flood insurance regulations are not proposing any substantive amendment to the text that implements this portion of the statute.

Loan Purchase as Equivalent to Loan Origination

The agencies' current regulations differ in their treatment of the issue whether the purchase of a loan constitutes the making of a loan for purposes of flood insurance. The OCC and the Board take the position that a loan purchase is not an event that triggers the obligation to make a flood hazard determination. The FDIC has not previously had an opportunity to express an opinion on the question.

The OTS's current regulations, on the other hand, view the purchase of a loan as the equivalent of the making of a loan for flood determination purposes. In an effort to promote uniformity among the agencies, the OTS is considering aligning its position with that of the OCC and the Board, so that a loan purchase by a savings association would not trigger an obligation to make a flood hazard determination.[15] Based on its regulations governing loan purchasing, NCUA previously took the position that if flood insurance would have been required for a Federal credit union to grant the loan, flood insurance would be necessary for the credit union to purchase the loan.

The OCC and the Board do not propose to revise their current regulatory language to add a loan purchase as a ''tripwire'' for determining whether adequate flood insurance exists. The statute identifies the events—the making, increasing, extending, or renewing of a loan—that trigger a lender's obligation to review the adequacy of flood insurance coverage on an affected loan. The Reform Act does not include loan purchase in this list of specified tripwires. The OCC and the Board note that a loan purchaser may always require as a condition of purchase that the seller determine whether the security property is located in a SFHA. The Reform Act authorizes the seller to charge a fee to the purchaser for making this determination.

With respect to residential mortgage loans sold in the secondary market, the inclusion of loan purchase as a tripwire event may be unnecessary because of the expansion of the scope of the NFIP's coverage with regard to Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac are the largest volume purchasers of residential mortgage loans. As a practical matter, these entities establish the industry standards not only for the residential mortgage loans that they buy, but for all residential mortgage loans that the originator does not intend to keep in portfolio. The bulk of home loans sold to other purchasers, including regulated lending institutions, typically conform with Fannie Mae and Freddie Mac standards. Pursuant to the Reform Act amendments,[16] those standards will include adequate flood insurance coverage on collateral securing loans sold to these entities. The OCC and the Board believe that including loan purchase as a regulatory tripwire could result in the imposition of duplicative (and potentially

[12] The definition of the term ''designated loan'' refers to loans ''secured by a building or mobile home'' because, as a practical matter, flood insurance is generally available only with respect to a structure or mobile home and not with respect to the land on which the structure or mobile home sits. This definition is unique to the agencies' flood insurance regulations and carries no implication about the nature or extent of the collateral that a lender otherwise requires as a matter of prudent underwriting.

[13] *See also* section 573 of the CDRI Act, increasing the maximum flood insurance coverage limits.

[14] In addition to the dollar limits in the 1968 Act, flood insurance coverage under the NFIP is limited to the overall value of the property less the value of the land.

[15] OTS has historically taken a different position on this question than the OCC and the Board. Section 102(b) of the 1973 Act (42 U.S.C. 4012a(b)) provides that regulated lending institutions may not ''make'' any loan secured by improved real estate or a mobile home located in a SFHA unless the security property is covered by an adequate policy of flood insurance. The OTS's predecessor, the Federal Home Loan Bank Board, considered the word ''make'' to be broad enough to include loan purchases. Otherwise, savings institutions could evade flood insurance requirements by the simple expedient of purchasing, rather than originating, loans. *See* 34 FR 5749 (Feb. 15, 1974). Accordingly, the OTS's regulations implementing the 1973 Act construe the phrase ''make a loan'' as including purchased loans, *see* 12 CFR 563.48(b).

[16] Section 522 of the CDRI Act.

inconsistent) requirements on the seller and the purchaser of a residential mortgage loan sold in the secondary market.

As noted previously, the FDIC has not previously had an opportunity to express an opinion on the question of whether the purchase of a loan is equivalent to the making of a loan for purposes of Federal flood insurance laws. The FDIC now proposes, in the interest of regulatory consistency, to formally adopt the position adhered to by the OCC and the Board that a loan purchase is not an event that triggers the obligation to make a flood hazard determination.

Given the Reform Act's extension of the flood insurance requirements to Fannie Mae and Freddie Mac, the OTS believes that coverage of loan purchases may no longer be necessary, especially if the agencies issue guidance on loan purchases, as discussed below. Therefore, the OTS, in an effort to promote consistent treatment for all regulated lending institutions, proposes to remove loan purchases from its flood insurance regulations. The OTS requests comment on this proposal.

Prior to the Reform Act, the NCUA took the position that if flood insurance would have been required for a Federal credit union to grant the loan, flood insurance would be necessary for the credit union to purchase the loan. This position is based upon the requirements of 12 CFR 701.23(b)(1) of the NCUA regulations, which state that a Federal credit union may only purchase a loan if it could have granted that loan or if the loan is restructured within 60 days after purchase so that it is a loan the Federal credit union could grant. The NCUA invites comment on whether it should maintain this position.

All of the agencies are considering whether, as a supervisory matter, to provide guidance on the flood insurance policies that institutions should follow when they purchase loans, including nonconforming home loans, loans secured by commercial property, portfolios of loans, and loan participations. Loans in these categories may be subject to underwriting standards that differ significantly from those established by Fannie Mae, Freddie Mac, or other government-sponsored enterprises for housing. Institutions with portfolios that include purchased loans may need to develop procedures to ensure that such purchases do not result in concentrations of loans secured by property subject to flood hazards for which insurance is not available or has not been obtained. The agencies invite comment on the need for this type of guidance and on what it should include.

Loan Acquisitions Involving Table Funding Arrangements.

The agencies also invite comment regarding whether lenders who provide table funding to close loans originated by mortgage brokers or mobile home dealers should be deemed to be ''making'' or ''purchasing'' loans for purposes of the flood insurance requirements. In the typical table funding situation, the party providing the funding ordinarily reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding for the mortgage loan ''at the table'' when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. Technically, however, the party providing the funding is purchasing rather than originating the loan.

The Financial Accounting Standards Board (FASB)[17] provides guidance on the issue whether the party providing the funding should account for a table funding arrangement as a loan purchase or loan origination, and what criteria should be used to evaluate whether a table funding arrangement constitutes a loan purchase or a loan origination. A mortgage loan acquired by the party providing the funding in a table funding arrangement should be accounted for as a purchase of the loan by the acquirer if the loan is legally structured as an origination by the broker or dealer and if the broker or dealer is independent of the provider of funds. In making these determinations, the broker or dealer must satisfy each of five criteria. Those criteria are:

1. The broker or dealer is registered and licensed to originate and sell loans under the applicable laws of the states or other jurisdictions in which it conducts business;

2. The broker or dealer originated, processed, and closed the loan in its own name and is the first titled owner of the loan, with the mortgage banking enterprise becoming a holder in due course;

3. The broker or dealer is an independent third party and not an affiliate of the mortgage banking company. As a nonaffiliate, the correspondent must bear all of the costs of its place of business, including the costs of its origination operations;

4. The broker or dealer must sell loans to more than one mortgage banking enterprise and not have an exclusive relationship with the acquirer; and

5. The broker or dealer is not directly or indirectly indemnified by the mortgage banking enterprise for market or credit risks on loans originated by the broker or dealer. However, a commitment by the mortgage banking enterprise for the purchase of loans from the broker or dealer is not considered to be an indemnification for purposes of this requirement.

If any of the criteria is not met, then the loan should be accounted for as an originated loan by the provider of the funds.

Under the Real Estate Settlement Procedures Act of 1974, as amended, (12 U.S.C. 2601–2617) (RESPA), table funding is defined as a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.[18] A table-funded transaction is not a ''secondary market transaction.'' 24 CFR 3500.2. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA or Regulation X, with certain exceptions. 24 CFR 3500.5(b)(7). The regulation provides that in determining what constitutes a bona fide transfer of a loan obligation in the secondary market, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not ''secondary market transactions.'' Neither the creation of a dealer loan nor the first assignment of such loan to a lender is a ''secondary market transaction.''

In the agencies' view, a table-funded transaction is more like a loan origination by the provider of funds than a purchase of a loan in the secondary market by that entity. Thus, lenders who provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be making a loan for purposes of the flood insurance requirements. The agencies request comment on this position and whether the FASB or RESPA standard is a more appropriate guideline.

Applicability of Federal Flood Insurance Requirements to Subsidiaries

The question whether Federal flood insurance legislation applies to mortgage banking subsidiaries of regulated lending institutions is mooted

[17] *See* Financial Accounting Standards Board, EITF Abstracts, Emerging Issues Task Force Issue No. 92–10, ''Loan Acquisitions Involving Table Funding Arrangements,'' 1993.

[18] Regulations issued by the Department of Housing and Urban Development (HUD) under RESPA appear in 24 CFR part 3500 (Regulation X).

to some extent by the previously noted Reform Act amendment requiring Fannie Mae and Freddie Mac to ensure that any improved real estate or mobile home located in a SFHA that secures a mortgage loan these entities purchase is covered by the legally required amount of flood insurance. Since mortgage bankers generally securitize their mortgage loans and then sell them in the secondary market, any such loan that is sold to either Fannie Mae or Freddie Mac must comply with their requirements and therefore must be covered by flood insurance.

Fannie Mae and Freddie Mac primarily purchase residential mortgage loans, however, and then usually for 1- to 4-family residential unit dwellings. As a result, most mortgage loans secured by commercial property or by residential property with more than 4 units are not subject to Fannie Mae or Freddie Mac requirements. Each agency's discussion with respect to the applicability of Federal flood insurance requirements to the subsidiaries of the institutions it regulates is set forth below.

OCC and Board. National banks' operating subsidiaries are subject to the rules applicable to the operations of their parent banks as provided under 12 CFR 5.34. Similarly, state member banks' operating subsidiaries are subject to the rules applicable to the operations of their parent banks.

FDIC. The FDIC is responsible for the federal supervision of state chartered banks which are not members of the Federal Reserve System. The FDIC has been given specific legal authority to fulfill that function through the prescription of such rules and regulations as the Board of Directors of the FDIC may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (FDI Act) or any other law which the FDIC has the responsibility of administering or enforcing including Federal flood insurance legislation. *See* section 9(a)(Tenth) of the FDI Act (12 U.S.C. 1819(a)(Tenth)). The authority of the FDIC to regulate insured nonmember banks extends to activities that such institutions may conduct through subsidiaries. The FDIC therefore proposes to require by regulation that a subsidiary of an insured nonmember bank that engages in lending secured by real estate must comply with Federal flood insurance requirements. The FDIC invites comment from all interested parties on this proposed interpretation. The FDIC proposes to make subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term ''bank'' to include a subsidiary of such an institution. The FDIC invites comments on this proposed method.

OTS. Operating subsidiaries of Federal savings associations are subject to the rules, including flood insurance regulations, applicable to their parent savings associations. 12 CFR 545.81(e). However, the current OTS regulations implementing the 1973 Act do not apply to a service corporation. 12 CFR 563.48(a); discussed in 39 FR 5749 (Feb. 15, 1974). Because the Reform Act defines the term regulated lending institution to include, among other things, any bank, savings and loan association, or similar institution subject to the supervision of a Federal entity for lending regulation, the OTS is proposing to apply its flood insurance regulations to service corporations that engage in mortgage lending. The OTS believes this position is consistent with the statutory language and Congressional intent, and ensures uniform and consistent treatment for regulated financial institutions. The OTS requests comment on this proposal.

FCA. Service corporations organized under the Farm Credit Act (12 U.S.C. 2001–2279bb-6) are System institutions subject to the regulations applicable to the operations of their parent banks. 12 U.S.C. 2213. Since System service corporations have no authority to extend credit, the applicability of these proposed flood insurance requirements to such organizations should not be in question. 12 U.S.C. 2211.

NCUA. A credit union, by itself, with other credit unions and/or with non-credit union parties, may invest in or loan money to a corporation or limited partnership, called a credit union service organization (CUSO), which provides services to its credit union investors. 12 CFR 701.27(d). CUSOs are not directly regulated by the NCUA; rather, NCUA establishes the conditions for Federal credit union investments in and loans to such organizations. 12 CFR 701.27(a). Since NCUA does not exercise direct regulatory or supervisory jurisdiction over them, NCUA believes that CUSOs are not regulated lending institutions subject to the Reform Act. However, CUSOs that originate mortgage loans generally do not warehouse those loans. Their loans are either sold directly to the secondary market or sold to the credit union. Therefore, as a practical matter, CUSOs must adhere to the Federal flood insurance requirements when making loans since, as described herein, loans purchased by credit unions or sold to Fannie Mae or Freddie Mac must conform with these requirements.

Exemptions

Before its amendment by the Reform Act, the 1973 Act provided an exemption to the basic flood insurance requirement for State-owned property covered under a policy for self-insurance satisfactory to the Director of FEMA. 42 U.S.C. 4012a. The proposal retains this exemption and adds the Reform Act's new exemption for loans with an original principal balance of $5,000 or less and a repayment term of one year or less.

Escrow of Flood Insurance Payments

The Reform Act requires the agencies to adopt rules providing that a regulated lending institution must require the escrow of flood insurance premiums for loans secured by residential properties if the lender requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for other types of insurance, and fees. The proposal implements this new requirement. Where appropriate, servicing agreements between a lender and loan servicer also should require a loan servicer to escrow flood insurance premiums.

Escrow of flood insurance premiums is not required if the regulated lending institution does not require escrow of taxes, insurance premiums, or other payments. Thus, if a regulated lending institution terminates a loan escrow account, the lender is no longer required to escrow flood insurance premiums.

Under section 523 of the CDRI Act (42 U.S.C. 4012a(d)), escrow accounts for flood insurance premiums are subject to the applicable provisions of section 10 of RESPA, 12 U.S.C. 2609. Section 10 generally limits the amount that may be maintained in an escrow account and requires certain escrow account statements.[19] The regulations implementing section 10 appear at 24 CFR 3500.17 (1995). *See also* 60 FR 8812 (Feb. 15, 1995) and 60 FR 24734 (May 9, 1995) (revising § 3500.17). The requirement to escrow flood insurance premiums will take effect when the new

[19] Certain loans are exempt from RESPA, however, including a loan for any purpose on property of 25 acres or more, or an extension of credit primarily for a business, commercial, or agricultural purpose. *See* 12 U.S.C. 2606; 24 CFR 3500.5. Thus RESPA is narrower in scope than the Federal flood insurance legislation. The agencies are of the opinion that section 10 of RESPA applies to flood insurance escrow accounts only if the underlying loan is covered by RESPA. For example, a lender that originates a loan in a special flood hazard area primarily for a business, commercial or agricultural purpose must escrow flood insurance premiums if it escrows other types of payments (such as payments for insurance or taxes) but the escrow account established for that loan need not comply with the requirements of section 10 of RESPA.

rules implementing the Reform Act are final.

Forced Placement of Flood Insurance

The Reform Act requires a regulated lending institution or servicer acting on its behalf to purchase—or ''force place''—flood insurance for the borrower if the regulated lending institution or servicer determines that adequate coverage is lacking. The statute does not prescribe how or when the regulated lending institution or servicer should make this determination. The Reform Act does say, however, that the determination may occur at the time of origination or at any time during the term of the loan. The forced placement provision applies to all loans outstanding on or after September 23, 1994.[20]

The agencies note that the Reform Act contains provisions designed to make it easier for lenders and servicers to obtain actual notice of remappings or of the expiration of coverage of flood insurance. FEMA must publish notice of all remappings; and FEMA must provide advance notice of the expiration of insurance coverage to property owners, loan servicers, and (if known to FEMA) the owners of the loans.

Portfolio Review

The Reform Act and the proposed rules do not require regulated lending institutions or servicers to undertake a review of all loans in portfolio as of September 23, 1994, that is, a retroactive portfolio review. First, the Reform Act does not revise the list of events that trigger a determination, that is, the making, increasing, renewing, or extension of a loan. Second, the Reform Act imposes no requirement for retroactive portfolio review. Finally, a requirement for retroactive portfolio review would impose a burden on regulated lending institutions that is both costly and unnecessary in light of the system of specific tripwires that the Reform Act establishes.

Similarly, the agencies do not believe that the Reform Act requires regulated lending institutions or servicers to conduct portfolio reviews on a prospective basis. The 1968 and 1973 Acts as amended by the Reform Act do not prescribe portfolio review, or any other method, as the means that lenders or servicers should use to determine whether security property is adequately covered by flood insurance, nor does it require that determinations be made at any particular time.

Because the Reform Act does not mandate review of loan portfolios, the agencies do not propose to establish such a requirement by regulation. Regulated lending institutions and their servicers will nonetheless need to develop policies and procedures to ensure that, where a determination has been made that property securing a loan is located in a SFHA, they are in compliance with the Reform Act's forced placement provision.

In addition, it may be appropriate as a matter of safety and soundness for the agencies to ensure that institutions that are significantly exposed to the risks for which flood insurance is designed to compensate determine the adequacy of flood insurance coverage by (1) periodic reviews, or (2) reviews triggered by remapping of areas represented in a regulated lending institution's loan portfolio.

The agencies solicit comment on the advisability of issuing guidance in this area and on how the guidance should differentiate among regulated lending institutions based on their levels of exposure to flood risk. In particular, the agencies invite comment describing the methods that regulated lending institutions already use or are considering for determining the adequacy of flood insurance coverage; the cost (or other burden) associated with portfolio reviews; and on whether the additional loans for which flood insurance would be required as a result of portfolio reviews would be significant in relation to a regulated lending institution's or servicer's portfolio.

Penalties

The penalty provisions of the Reform Act are self-executing. They do not require the agencies to develop regulations to implement them, and the agencies are not proposing to do so.

Determination Fees

The Reform Act authorizes a lender or servicer acting on behalf of a lender to charge a reasonable fee for making a flood hazard determination, notwithstanding any other Federal or State law. This fee may be charged to the borrower under certain circumstances specified in the statute: if the borrower initiates the transaction (the making, increasing, extending, or renewing of a loan) that triggers a flood hazard determination; if the determination reflects FEMA's revision of map areas subject to flooding; or if the determination results in the purchase of flood insurance under the forced placement provision. In the case of a sale or transfer of the loan, the fee may be charged to the purchaser or transferee. The proposal includes the same authorization to charge reasonable determination fees as the Reform Act.

Section 526 of the CDRI Act (42 U.S.C. 4012a(h)) constitutes an authorization to charge fees in certain circumstances, notwithstanding the provisions of any other Federal or State law. It does not limit the ability of a lender to provide for determination fees in other circumstances under its lending contract, provided that such fees are not in conflict with other Federal or State laws.

Notice Requirements

The proposal revises the current regulation to reflect the provisions added by the Reform Act that prescribe the minimum contents of a regulated lending institution's notice concerning special flood hazards to borrowers and loan servicers.

The 1968 Act (42 U.S.C. 4104a) requires regulated lending institutions to notify the ''purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee)'' of special flood hazards. In this context, the terms ''purchaser'' and ''lessee'' refer to the person who will occupy a property. The Reform Act did not amend this statutory language. The current regulation states that the regulated lending institution must notify the borrower of special flood hazards and states that in lieu of such notification, a regulated lending institution may obtain satisfactory written assurance that the seller or lessor has so notified the borrower prior to the execution of the sale or lease agreement. Each of the agencies has used the word ''borrower'' in place of the ''purchaser'' or ''lessee'' designation contained in the statute, primarily to provide greater clarity. The proposal does not change this terminology.

The agencies invite comment on the advisability of retaining this language.

The notification to the borrower and servicer must include a warning that the building on the improved real estate or the mobile home is or will be located in an area having special flood hazards, a description of the flood insurance purchase requirements under section 102(b) of the 1973 Act (42 U.S.C. 4012a(b)), a statement that insurance may be purchased under the NFIP and is also available from private insurers, and any other information that the Director of FEMA considers necessary to carry out the purposes of the NFIP. The proposal follows the statute and

[20] With regard to the timing of the applicability of this requirement to System institutions, *see* discussion under ''Dates of applicability,'' *supra*.

requires that these items be included in the notice.[21]

The current regulatory provision requiring lenders to provide notice to borrowers of the availability of Federal disaster relief assistance in the event of flooding implements a portion of the 1973 Act (42 U.S.C. 4106(b)) that has not been amended substantively and, therefore, remains unchanged.

The 1968 Act requires the lender to provide notice of special flood hazards within a reasonable period of time in advance of the signing of the documents involved in the transaction. The proposal reflects the Reform Act amendment that added the loan servicer to the entities that must be notified. However, in the agencies' view, it may not be possible in all cases for a lender to provide such advance notice to a loan servicer. The agencies request comment on the appropriate timing of the notification to the loan servicer.

The current regulations require that the borrower, prior to closing, furnish the lender with a written acknowledgment of the receipt of the notices. The Reform Act mandates that the agencies' regulations require lenders to retain a record of the receipt of the notices by the borrower and the loan servicer. The proposed regulation reflects this change and deletes the acknowledgment provision.

The agencies request comment on whether the final regulations should require the lender to retain a copy of each notice in its files.

The substance of the ''safe harbor'' provision in the current regulations permitting lenders to rely on the language presented in sample notices that currently appear either in the body of the regulations or in an appendix to the regulations remains unchanged. The language in the sample notices is revised to reflect amendments to the 1968 Act (42 U.S.C. 4104a(a)(3)) made by section 527 of the CDRI Act.

The proposal also implements the new requirement that regulated lending institutions notify the Director of FEMA (or the Director's designee) of the identity of the loan servicer and of any change in the servicer with respect to any loan secured by improved real estate or a mobile home located in a SFHA. The agencies understand that the Director of FEMA intends to designate the insurance agent that writes the flood insurance to receive the notice.

The agencies request comment on whether the final regulations should require the lender to retain a copy of the notice of the identity of the servicer in its files.

Use of Standard Flood Hazard Determination Form

As mentioned in the *Background* section of this proposal, each agency has issued a final rule requiring the institutions they supervise to use the standard flood hazard determination form developed by FEMA when they determine whether improved real estate or a mobile home offered as collateral for a loan is located in a SFHA. For the convenience of the reader, the sections of the regulatory text established by those final rules are included in this proposal. The regulatory text contains nonsubstantive revisions made to reflect abbreviations and minor word changes to fit the format of the proposed regulations.

The Reform Act permits lenders to rely on third-party determinations but only if the third party guarantees the accuracy of the information provided to the lender. Moreover, the Reform Act permits a lender to rely on a previous determination whether the security property is located in a special flood hazard area and exempts the lender from liability for errors in the previous determination, if the previous determination is not more than seven years old and the basis for it was recorded on the standard flood hazard determination form that FEMA has developed.

There are two clearly defined exceptions to relying on a previous determination. A lender may not rely on a previous determination if FEMA's map revisions or updates have caused the security property to be located in a SFHA, or if the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

Recordkeeping Requirements

The rules of the five agencies that currently have flood insurance regulations include a requirement that an institution keep records sufficient to show how it has determined whether loans fall within the coverage of the NFIP and the implementing regulations. The proposal removes this provision because the proposed provisions on recordkeeping appear in the substantive sections to which they pertain, including the required use of the standard flood hazard determination form and the notification sections.

Agricultural Lending Considerations

System lending institutions have raised preliminary questions regarding the operation of the NFIP, particularly with respect to the cost of insuring agricultural structures that secure loans. The FCA notes that questions regarding the operation and cost structure of the NFIP should be directed to FEMA as administrator of the NFIP. However, the FCA recognizes that System institutions are entering the NFIP for the first time and are concerned about their new administrative responsibilities under the NFIP as well as the costs of flood insurance to borrowers. The FCA is not in the position to respond fully to some of the concerns that have been raised regarding the NFIP, but FEMA officials indicate that the NFIP does differentiate between non-residential agricultural buildings and other types of non-residential buildings for purposes of pricing flood insurance. Thus a barn, storage shed or other type of agricultural structure at a given elevation in a SFHA might cost less to insure against flood loss than another type of commercial structure more susceptible to flood damage. Where required, borrowers may insure their non-residential buildings using one policy with a schedule separately listing the buildings[22] or on a separate policy for each building. Each building must be covered by flood insurance.

Concern has also been expressed regarding treatment under the NFIP of improved property securing an agricultural loan that is located within a SFHA but on high ground making flooding unlikely. FEMA officials indicate that a borrower in such circumstances could apply to FEMA for a Letter of Map Amendment, which, if granted would exclude the building from the SFHA and eliminate the requirement for flood insurance on the structure. *See* 44 CFR part 70. As previously noted, questions regarding the operation of the NFIP generally should be directed to FEMA and NFIP officials.

III. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not

[21] Readers should be aware that section 1364 of the 1968 Act as amended by section 527 of the CDRI Act requires that the notice of special flood hazards also list any other information that the Director of the FEMA considers necessary to carry out the purposes of the NFIP. The agencies have been informed by FEMA staff that at the present time there are no plans to require that any other information be listed on the notice.

[22] FEMA also permits use of schedules to list multiple structures for purposes of the standard flood hazard determination form. *See* 60 FR 35276, 35280 (July 6, 1995); 44 CFR part 65, App. A.

have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its general notice of proposed rulemaking.

Pursuant to section 605(b) of the RFA, the OCC, Board, FDIC, OTS, and NCUA hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this proposal will not: (1) Have significant secondary or incidental effects on a substantial number of small entities, or (2) create any additional burden on small entities. Moreover, this proposal is required by the Reform Act. Accordingly, a regulatory flexibility analysis is not required.

As a general matter, the proposed rule does not impose standards that are in excess of industry standards with respect to flood insurance, as those standards are reflected in the underwriting standards for Fannie Mae and Freddie Mac. Further, for those lenders already covered by existing flood insurance requirements, the proposed rule does not represent a significant increase over the burden imposed under the current rules. For such lenders, the proposed rules would increase burden above that imposed under the current rules in the following respects: (1) Where the lender escrows other tax and insurance payments, premiums for required flood insurance must be escrowed as well; (2) the content of the notices currently provided to borrowers is modified; and (3) notice to FEMA of the servicer of the loan on property in a special flood hazard area is required.[23] Each of these additions to the current rules is required by the Reform Act.

IV. Paperwork Reduction Act of 1995

The OCC, FDIC, OTS, and NCUA invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 22.6, 22.7, 22.9, and 22.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (national banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a special flood hazard area). The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated number of respondents and/or recordkeepers: 3,000.
Estimated total annual reporting and recordkeeping burden: 78,000 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; *see also* 5 CFR 1320 Appendix A Item 1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0280), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation will be included in 12 CFR 208.23. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (state chartered member banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a special flood hazard area). The respondents/recordkeepers are for-profit financial institutions, including small businesses.

Respondent/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control number is 7100–0280.

It is estimated that there will be 975 respondent/recordkeepers and a total of 25,977 hours of annual hour paperwork burden. The estimated annual hour paperwork burden per respondent/recordkeeper is 26.6 hours, 1 hour for recordkeeping and, when the property is located in a special flood hazard area, a total of 25.6 hours for: (a) Notifying the borrower and the servicer; (b) notifying the Director of the initial servicer; (c) if necessary, notifying the Director when the loan servicer has changed; and (d) if necessary, notifying the borrower regarding forced placement. Banks likely will add the required records to their existing usual and customary loan documentation. Thus there is estimated to be no significant annual cost burden over the annual hour burden. Additionally, the Board estimates that there is no associated capital or start up cost. Based on an hourly cost of $20, the annual cost to the public is estimated to be $519,540.

Because the records would be maintained at state member banks and the notices are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (b) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the

[23] The provision concerning forced placement of flood insurance is self-implementing and is included in the proposed rules only to ensure that lenders are aware of the authority and requirements of that provision. Including the provision in the proposed rule does not impose any additional burden on lenders.

Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collections of information requirements in this proposed regulation are found in 12 CFR 339.6, 339.7, 339.9, and 339.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (state chartered nonmember banks) and borrowers (anyone who applies for a loan secured by improved real estate or a mobile home which may be located in a special flood hazard area).

The likely respondents/recordkeepers are insured nonmember banks and their subsidiaries.

Estimated number of respondents/recordkeepers: 6,250.
Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 162,500 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

OTS: The reporting requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping requirements in this notice of proposed rulemaking are found in 12 CFR 572.6, 572.7, 572.9, and 572.10. The recordkeeping requirements set forth in this notice of proposed rulemaking are needed by the OTS in order to supervise savings associations and develop regulatory policy. The likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,500.
Estimated average annual burden hours per recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 39,000 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

NCUA: The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the collection of information should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Attn: Milo Sunderhauf. NCUA will publish a notice in the Federal Register once OMB action is taken on the submitted request.

The collection of information requirements in this proposed regulation are found in 12 CFR 760.6, 760.7, 760.9 and 760.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (Federally insured credit unions) and borrowers (members that apply for a loan secured by improved real estate or a mobile home which may be located in a special flood hazard area). The likely recordkeepers are Federally insured credit unions.

Estimated number of respondents and/or recordkeepers: 700.
Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 16,325 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

V. Executive Order 12866

OCC and OTS: The OCC and the OTS have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866.

VI. Executive Order 12612

NCUA: This proposed rule, like the current 12 CFR part 760 it would replace, will apply to all Federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that this proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Further, this proposed rule will not preempt provisions of State law or regulations.

VII. Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act), requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the proposed rule revises current OCC and OTS flood insurance regulations as prescribed by Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, Title V, 108 Stat. 2160 (1994) (Reform Act). The Reform Act specifically requires six agencies, including the OCC and OTS, to implement certain of the Reform Act's amendments through regulations. Therefore, to the extent that the proposed rules impose new Federal requirements, such requirements are statutorily mandated by the Reform Act. Nevertheless, the OCC and OTS have determined that the proposed rules will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping

requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 572

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.
22.1 Authority, purpose, and scope.
22.2 Definitions.
22.3 Requirement to purchase flood insurance where available.
22.4 Exemptions.
22.5 Escrow requirement.
22.6 Required use of standard flood hazard determination form.
22.7 Forced placement of flood insurance.
22.8 Determination fees.
22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
22.10 Notice of servicer's identity.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 22.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued pursuant to 12 U.S.C. 93a and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose*. The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope*. This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 22.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Bank* means a national bank or a bank located in the District of Columbia and subject to the supervision of the Comptroller of the Currency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

§ 22.3 Requirement to purchase flood insurance where available.

A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

§ 22.4 Exemptions.

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 22.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the bank shall also require the escrow of all premiums and fees for any flood insurance required under § 22.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the bank or its servicer shall pay the amount owed to the insurance provider from the escrow account.

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form*. A bank shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral

security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

§ 22.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 22.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(b) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 22.7.

(c) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The bank shall provide the notice required by paragraph (a) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(d) *Record of receipt.* The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) *Use of prescribed form of notice.* A bank may comply with the notice requirements of this section by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this part not less than ten days before the completion of the transaction (or not later than the bank's commitment if the period between the commitment and the completion of the transaction is less than ten days).

§ 22.10 Notice of servicer's identity.

(a) *Notice requirement.* When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(b) *Transfer of servicing rights.* The bank shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____ The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____ The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of:*

(1) The outstanding principal amount of the loan; or

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: September 11, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 208.8 [Amended]

2. In § 208.8, paragraph (e) is removed and reserved, and appendix A—Sample Notices is removed.

3. A new § 208.23 is added at the end of subpart A to read as follows:

§ 208.23 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* (1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

(c) *Requirement to purchase flood insurance where available.* A state member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a state member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the state member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The state member bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the state member bank or its servicer shall pay the amount owed to the insurance provider from the escrow account.

(f) *Required use of standard flood hazard determination form*—(1) *Use of form.* A state member bank shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65)

when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A state member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a state member bank, or a servicer acting on behalf of the bank, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the state member bank or its servicer shall purchase insurance on the borrower's behalf. The state member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any state member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(2) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(iii) Reflects the Director's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance*—(1) *Notice requirement.* When a state member bank makes, increases, extends, or renews a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(2) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(3) *Timing of notice.* The state member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(4) *Record of receipt.* The state member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(5) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a state member bank may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The state member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(6) *Use of prescribed form of notice.* A state member bank may comply with the notice requirements of this paragraph (i) by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this section not less than ten days before the completion of the transaction (or not later than the bank's commitment if the period between the commitment and the completion of the transaction is less than ten days).

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(2) *Transfer of servicing rights.* The state member bank shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.23—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:_____. This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located

participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Governors of the Federal Reserve System, October 3, 1995.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to revise part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.
339.2 Definitions.
339.3 Requirement to purchase flood insurance where available.
339.4 Exemptions.
339.5 Escrow requirement.
339.6 Required use of standard flood hazard determination form.
339.7 Forced placement of flood insurance.
339.8 Determination fees.
339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
339.10 Notice of servicer's identity.
Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Bank* means an insured State nonmember bank and an insured State branch of a foreign bank or any subsidiary of an insured State nonmember bank.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

§ 339.3 Requirement to purchase flood insurance where available.

A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 339.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the bank shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be

subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the bank or its servicer shall pay the amount owed to the insurance provider from the escrow account.

§ 339.6 Required use of standard flood hazard determination form.

(a) *Use of form*. A bank shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form*. A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

§ 339.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 339.8 Determination fees.

(a) *General*. Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee to the borrower for determining whether a building or mobile home securing the loan is located or will be located in a special flood hazard area.

(b) *Borrower fee*. The determination fee may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 339.7.

(c) *Purchaser or transferee fee*. The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement*. When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice*. The written notice must include the following information:

(1) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice*. The bank shall provide the notice required by paragraph (a) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(d) *Record of receipt*. The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) *Alternate method of notice*. Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) *Use of prescribed form of notice*. A bank may comply with the notice requirements of this section by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this part not less than ten days before the completion of the transaction (or not later than the bank's commitment if the period between the commitment and the completion of the transaction is less than ten days).

§ 339.10 Notice of servicer's identity.

(a) *Notice requirement*. When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(b) *Transfer of servicing rights*. The bank shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____ The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____ The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:

_____.

This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of September, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, subchapter D of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended, as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.48 [Removed]

2. Section 563.48 is removed.

3. A new part 572 is added to read as follows:

PART 572—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

572.1 Authority, purpose, and scope.
572.2 Definitions.
572.3 Requirement to purchase flood insurance where available.
572.4 Exemptions.
572.5 Escrow requirement.
572.6 Required use of standard flood hazard determination form.
572.7 Forced placement of flood insurance.
572.8 Determination fees.
572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
572.10 Notice of servicer's identity.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 572.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462, 1462a, 1463, 1464 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C.4001–4129).

(c) *Scope.* This part, except for §§ 572.6 and 572.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 572.6 and 572.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 572.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) [Reserved]

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

§ 572.3 Requirement to purchase flood insurance where available.

A savings association shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

§ 572.4 Exemptions.

The flood insurance requirement prescribed by § 572.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 572.5 Escrow requirement.

If a savings association requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the savings association shall also require the escrow of all premiums and fees for any flood insurance required under § 572.3. The savings association or a servicer acting on behalf of the savings association, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the savings association or its servicer shall pay the amount owed to the insurance provider from the escrow account.

§ 572.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A savings association shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the savings association owns the loan.

§ 572.7 Forced placement of flood insurance.

If a savings association, or a servicer acting on behalf of the savings association, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 572.3, then the savings association or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 572.3, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the savings association or its servicer shall purchase insurance on the borrower's behalf. The savings association or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 572.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any savings association, or a servicer acting on behalf of the savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(b) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 572.7.

(c) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The savings association shall provide the notice required by paragraph (a) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(d) *Record of receipt.* The savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the savings association owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a savings association may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The savings association shall retain a record of the written assurance from the seller or lessor for the period of time the savings association owns the loan.

(f) *Use of prescribed form of notice.* A savings association may comply with the notice requirements of this section by providing written notice to a borrower and to the servicer containing

the language presented in appendix A to this part not less than ten days before the completion of the transaction (or not later than the savings association's commitment if the period between the commitment and the completion of the transaction is less than ten days).

§ 572.10 Notice of servicer's identity.

(a) *Notice requirement.* When a savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the savings association shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan.

(b) *Transfer of servicing rights.* The savings association shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____ The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____ The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:

_____.

This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: September 30, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Farm Credit Administration

12 CFR CHAPTER VI

Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. Part 614 is amended by revising subpart S to read as follows:

Subpart S—Flood Insurance Requirements

Sec.

614.4920 Purpose and scope.
614.4925 Definitions.
614.4930 Requirement to purchase flood insurance where available.
614.4935 Escrow requirement.
614.4940 Required use of Standard Flood Hazard Determination Form.
614.4945 Forced placement of flood insurance.
614.4950 Determination fees.
614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.
614.4960 Notice of servicer's identity.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Subpart S—Flood Insurance Requirements

§ 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act), as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans of Farm Credit System (System) institutions that are secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§ 614.4925 Definitions.

(a) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(b) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(c) *Designated loan* means a loan secured by a building or a mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

(d) *Director* means the Director of the Federal Emergency Management Agency.

(e) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this subpart,

the term *mobile home* means a mobile home on a permanent foundation.

(f) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

(g) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(h) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(i) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

§ 614.4930 Requirement to purchase flood insurance where available.

(a) *General requirement.* A System institution shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan are covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act.

(b) *Exemptions.* The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5000 or less and a repayment term of one year or less.

§ 614.4935 Escrow requirement.

If a System institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended or renewed after [effective date of final regulation], then the institution also shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930. The institution, or a servicer acting on behalf of the institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the institution or its servicer shall pay the amount owed to the insurance provider from the escrow account.

§ 614.4940 Required use of Standard Flood Hazard Determination Form.

(a) *Use of form.* System institutions shall use the Standard Flood Hazard Determination Form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The Standard Flood Hazard Determination Form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* System institutions shall retain a copy of the completed Standard Flood Hazard Determination Form, in either hard copy or electronic form, for the period of time the institution owns the loan.

§ 614.4945 Forced placement of flood insurance.

If a System institution, or a servicer acting on behalf of the institution, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan are not covered by flood insurance or are covered by flood insurance in an amount less than the amount required under § 614.4930(a), then the institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930(a), for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the institution or its servicer shall purchase insurance on the borrower's behalf. The institution or its servicer may charge the borrower for the premiums and fees incurred in purchasing the insurance.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the 1973 Act, any System institution, or a servicer acting on behalf of the institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(b) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 614.4945.

(c) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the institution shall mail or deliver a written notice containing the information specified in paragraph (b) of this section to the borrower and to the servicer of the loan. Notice is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the 1973 Act (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and also may be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be

available in the event of damage to the building or the mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The institution shall provide the notice required by paragraph (a) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(d) *Record of receipt.* Each institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an institution may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The institution shall retain a record of the written assurance from the seller or lessor for the period of time the institution owns the loan.

(f) *Use of prescribed form of notice.* An institution may comply with the notice requirements of this section by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this subpart not less than 10 days before the completion of the transaction (or not later than the institution's commitment if the period between the commitment and the completion of the transaction is less than 10 days).

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the institution shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(b) *Transfer of servicing rights.* The institution shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:

_____.

This area has at least a 1-percent chance of being flooded in any given year. The risk grows each year.

For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26 percent.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

- Federal disaster relief assistance (usually in the form of a low interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least 1 year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

Dated: September 8, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, part 760 of chapter VII of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

760.1 Authority, purpose, and scope.
760.2 Definitions.
760.3 Requirement to purchase flood insurance where available.
760.4 Exemptions.
760.5 Escrow requirement.
760.6 Required use of standard flood hazard determination form.
760.7 Forced placement of flood insurance.
760.8 Determination fees.
760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
760.10 Notice of servicer's identity.

Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 760.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally

above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

§ 760.3 Requirement to purchase flood insurance where available.

A credit union shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

§ 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 760.5 Escrow requirement.

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the credit union shall also require the escrow of all premiums and fees for any flood insurance required under § 760.3. The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the credit union or its servicer shall pay the amount owed to the insurance provider from the escrow account.

§ 760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

§ 760.7 Forced placement of flood insurance.

If a credit union, or a servicer acting on behalf of the credit union, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 760.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(b) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 760.7.

(c) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a credit union makes, increases, extends, or

renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of prescribed form of notice.* A credit union may comply with the notice requirements of this section by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this part not less than ten days before the completion of the transaction (or not later than the credit union's commitment if the period between the commitment and the completion of the transaction is less than ten days).

§ 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(b) *Transfer of servicing rights.* The credit union shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____ The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____ The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:

_____.

This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: September 28, 1995.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 95–25257 Filed 10–17–95; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 6705–01–P, 7535–01–P

Federal Register

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October 18, 1995

Part III

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants: New Methods; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5308–4]

Guidelines Establishing Test Procedures for the Analysis of Pollutants: New Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: Under the Clean Water Act, Section 304(h), EPA proposes to amend its list of approved analytical techniques by adding new or revised test procedures for certain metal and inorganic chemical pollutants, by adding method citations to Table IB and by amending the incorporation by reference section of the regulation accordingly.

EPA is also proposing to substitute reagents that are more environmentally friendly for certain hazardous and toxic chemical reagents currently used in certain approved methods.

In addition, EPA is proposing to withdraw approval of certain outdated or little used analytical methods, as well as, certain methods that require the use of hazardous or toxic reagents. For each method that is proposed for withdrawal, one or more commonly used methods have been previously approved.

Comments are requested on this proposed rulemaking. After considering comments received in response to this proposal, EPA will promulgate a final rule.

This action amends guidelines establishing test procedures for the analysis of pollutants by adding clarifying notes to lists of approved test procedures, by adding and updating certain method citations in Tables IB and IC, and by amending the incorporation by reference section of the regulation accordingly.

DATES: Comments on the proposed amendments will be accepted until December 18, 1995.

ADDRESSES: Send written comments to the 304(h) Docket Clerk (Ben Honaker), Water Docket (MC–4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted because EPA cannot assure that they will be submitted to the Water Docket.

The supporting materials are available for review at the Water Docket at the address above. For access to Docket Materials, call (202) 260–3027 between 9 am and 3:30 pm for an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, Aquatic Research Division, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

Materials in the public docket include:

- ''Methods for the Determination of Metals in Environmental Samples'' Supplement I, EPA–600/R–94/111, May 1994.
- ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA–600/R–93/100, August 1993.
- ''Determination of Trace Elements in Water by Inductively Coupled Plasma-Mass Spectrometry: Collaborative Study'', Journal of AOAC-International, 77, pp. 1004–1023, 1994.
- ''Determination of Inorganic Anions in Water by Ion Chromatography: Collaborative Study'', Journal of AOAC-International, 77, pp. 1253–1263, 1994.
- ''Ion Chromatographic Method for Dissolved Hexavalent Chromium in Drinking Water, Ground Water, and Industrial Wastewater Effluents: Collaborative Study'', Journal of AOAC-International, 77, pp. 994–1004, 1994.
- ''Low-level Chlorine Analysis by Amperometric Titration'', Journal of the Water Pollution Control Federation, 51, pp. 2636–2640, 1979.

A copy of the first two items can also be obtained from EPA through a facsimile request to the Chemistry Research Branch, Aquatic Research Division, Cincinnati, Ohio, on (513) 569–7757.

I. Authority

This regulation is proposed under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the ''Act''). Section 301 prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a NPDES permit, issued under Section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act''. Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his functions under this Act''.

The use of approved test procedures or approved alternate procedures is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical (including pesticides), radiological, biological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR 122.41 permit writers may impose monitoring

requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Persons wishing to use such alternate procedures, must apply to the State or Regional EPA permitting office [for limited approval under 136.4 (b)], and to the Director of the Environmental Monitoring Systems Laboratory in Cincinnati [for nationwide approval under 136.4 (d)]. As specified below, today's proposed rule would approve additional nationwide test procedures for certain metals, anions, Cr(VI) and VOCs in wastewater and related samples.

III. Summary of Proposed Methods

The proposed methods have been reviewed by appropriate members of and written in the EPA Environmental Monitoring Management Council Format.

The methods proposed for addition include new methods for: preparation of samples for metals analysis, inductively coupled plasma/mass spectrometry (ICP/MS), a stabilized temperature graphite furnace atomic absorption (STGFAA) method for metals, and ion chromatography (IC) methods for anions and for hexavalent chromium [Cr(VI)]. A revised EPA inductively coupled plasma atomic emission spectrometry (ICP–AES) method for metals to replace the currently approved method, and a low-level extension of the approved method for the determination of low level total residual chlorine are also being proposed.

Methods 200.7, 200.8, and 200.9 were approved for use in EPA's drinking water programs at 40 CFR Part 141.23(k)(1) on December 5, 1994 (59 FR 62466). When the methods proposed today are promulgated at 40 CFR Part 136 for use in EPA's wastewater programs, these three methods will be conformed for the two programs.

Although not part of today's proposal, the Agency's Environmental Monitoring Management Council (EMMC) will soon propose integrated methods for citation in several regulations, including those at Part 136. The methods include a graphite furnace atomic absorption spectrometry method for certain metals and an inductively coupled plasma atomic emissions spectrometry method for metals. These methods may be included in the final rule for today's proposal.

In the interest of pollution prevention, EPA is proposing to replace mercuric sulfate with copper sulfate in the total Kjeldahl nitrogen methods and to permit the substitution of the AMCO–AEPA–1 Standard for the formazin standard in the turbidity method. Replacement of these two reagents would remove hazardous or potentially carcinogenic chemicals from use in EPA approved methods.

A. Sample Preparation for Total Recoverable Elements

EPA is proposing a new broad-purpose digestion procedure for total recoverable elements. It has the advantage of being compatable with several of the approved measurement techniques, which will allow laboratories to achieve some cost savings by reducing preparations and increasing flexibility in choosing approved analytical techniques after digestion. This preparation procedure is a variation of the procedures given in the previously approved EPA 200 Series Methods for ''total recoverable'' metals published in ''Methods for Chemical Analysis of Water and Wastes''. It utilizes the same acid combination (nitric + hydrochloric) as the previous ''total recoverable'' procedures, but the acid concentration has been modified by lowering the amount of hydrochloric acid.

This sample preparation procedure has been incorporated into three EPA Methods proposed today, including, a May 1994 revision of the approved ICP/AES Method 200.7, a new measurement technology ICP/MS Method 200.8, and a stabilized temperature graphite furnace automatic absorption (GFAA) method (Method 200.9). In addition, EPA has prepared a stand-alone version of the digestion procedure: Method 200.2 ''Sample Preparation Procedure for Spectrochemical Determination of Total Recoverable Elements''. EPA proposes to permit the substitution of Method 200.2 for the digestion procedure in certain non-EPA approved direct aspiration flame atomic absorption procedures. The digestion procedure has been tested on various matrices using determinative methods 200.7, 200.8 and 200.9 and has been found comparable to previously approved NPDES preparation procedures. Method 200.2 was also validated through interlaboratory testing in the joint EPA/AOAC International study of Method 200.8. Each of the new EPA procedures includes: a list of elements to which it applies, sample preservation practices, and preparation conditions.

EPA proposes to withdraw the EPA AA direct aspiration and AA furnace methods contained in ''Methods for Chemical Analysis of Water and Wastes''. The methods are out of date and lack many of the necessary instructions included in more recently produced EPA methods. The remaining approved non-EPA methods for AA direct aspiration are sufficiently identical to the withdrawn methods as to result in no impact on the regulated community. The EPA furnace methods are being replaced by EPA Method 200.9. Appendix D to this regulation, which contains the interlaboratory measures of precision and accuracy for the EPA methods that are being withdrawn, would also be removed by this proposal.

B. Elemental Analysis by ICP/AES

The EPA proposes to approve the May 1994 revision of Method 200.7, ''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry'' and to cite the revised method by reference. Accordingly, Appendix C to 40 CFR Part 136 would be deleted. The May 1994 edition of the method has been demonstrated to produce precision and recovery for the applicable elements that is equal to or better than that achieved by the currently approved edition and published in Table 4 of Appendix C. The procedure includes: A list of elements to which it applies, sample collection practices, preparation conditions, and quality control practices. The EMMC inductively coupled plasma-atomic emission spectrometry method being proposed elsewhere is proposed to be interchangeable with Method 200.7 for the purposes of this regulation.

C. Elemental Analysis by ICP/MS

The Agency is proposing a new multielement test procedure, ICP/MS, Method 200.8 ''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry'' for the detection and quantification of 20 metals in aqueous samples. Sample material in solution is introduced by pneumatic nebulization into a radio-frequency plasma where energy transfer processes cause desolvation, atomization and ionization. The ions are extracted from the plasma through a differentially pumped vacuum interface and separated on the basis of their mass-to-charge ratio by a

quadrupole mass spectrometer having a minimum resolution capability of 1 amu peak width at 5% peak height. The ions transmitted through the quadrupole are registered by an electron multiplier or Faraday detector and the ion information processed by a data handling system. Interferences relating to the technique must be identified and results must be corrected accordingly. Such corrections must include compensation for isobaric elemental interferences and interferences from polyatomic ions derived from the plasma gas, reagents or sample matrix. Instrumental drift, as well as suppressions or enhancements of instrument response caused by the sample matrix, must be corrected by the use of internal standardization.

The Agency developed ICP/MS Method 200.8 under a contract and in cooperation with AOAC International jointly conducted an interlaboratory validation study of the method. This method (May 1994) represents the current state-of-the-art for the determination of metals in wastewater and water related media. The method description includes a list of the elements to which the method applies, sample collection practices, recommended analytical conditions, quality control practices, instrumental and method detection limits, and performance criteria based on the interlaboratory study data.

AOAC-International has approved and published this ICP/MS method along with the study results as AOAC-International Method 993.14. The same method is in the final stages of the ASTM consensus process. EPA proposes to approve the AOAC-International method, as well as, consider approval of the ASTM ICP/MS Method if full ASTM Society acceptance is achieved prior to final EPA rulemaking.

D. Elemental Analysis by Stabilized Temperature Platform GFAA

The May 1994 Revision of Method 200.9 ''Determination of Trace Metals by Stabilized Temperature Graphite Furnace Atomic Absorption'' is being proposed as a replacement for the currently approved EPA furnace methods. Method 200.9 determines elements by stabilized temperature graphite furnace atomic absorption (STGFAA). In STGFAA, the sample and required matrix modifier are first pipetted onto the platform or a device which provides delayed atomization. The sample is then dried at a relatively low temperature (≈120°C) to avoid spattering. Once dried, the sample is normally pretreated in a char or ashing step which is designed to minimize the interference effects caused by the concomitant sample matrix. After the char step, the furnace is allowed to cool prior to atomization. The atomization cycle is characterized by rapid heating of the furnace to a temperature where the metal (analyte) is atomized from the pyrolytic graphite surface. The resulting atomic cloud absorbs the element specific atomic emission produced by a hollow cathode lamp or a electrodeless discharge lamp.

Because the resulting absorbance usually has a nonspecific component associated with the actual analyte absorbance, an instrumental background correction device is necessary to subtract from the total signal the component which is nonspecific to the analyte. In the absence of interferences, the background corrected absorbance is directly related to the concentration of the analyte. Interferences relating to suppression or enhancement of instrument response caused by the sample matrix, must be corrected by the method of standard addition.

The method description includes a list of elements to which the method applies, sample collection practices, recommended analytical conditions, quality control practices, method detection limits and performance criteria based on single laboratory study data. The EMMC furnace atomic absorption method being proposed elsewhere is proposed to be interchangeable with Method 200.9 for the purposes of this regulation.

E. Anions by Ion Chromatography

EPA developed IC Method 300.0 for the following anions: Bromide, chloride, fluoride, nitrate-N, nitrite-N, ortho-phosphate, and sulfate. Using IC, a water sample is injected into a stream of carbonate-bicarbonate eluent and passed through a series of ion exchangers. The anions of interest are separated on the basis of their relative affinities for a low capacity, strongly basic anion exchanger (guard and separator columns). The separated anions are directed through a hollow fiber cation exchanger membrane (fiber suppressor) or micromembrane suppressor bathed in continuously flowing strongly acid solution (regenerant solution). In the suppressor the separated anions are converted to their highly conductive acid forms and the carbonate-bicarbonate eluent is converted to weakly conductive carbonic acid. The separated anions in their acid forms are measured by conductivity. They are identified on the basis of retention time as compared to reference standards. Quantitation is by measurement of peak area or peak height.

EPA, in cooperation with ASTM Committee D–19 on Water, has conducted an interlaboratory validation study of EPA method 300.0 ''The Determination of Inorganic Anions in Water by Ion Chromatography'', August 1993. The method represents current state-of-the-art for determination of the anions listed above. The method description includes: Sample collection practices, recommended analytical conditions, quality control practices and estimated detection limits for the applicable analytes and performance criteria based on the interlaboratory study data. ASTM, Standard Methods, and AOAC-International have approved the method under their consensus systems and have published the method in their Books of Standards. EPA also proposes to approve the ASTM Method D–4327, as well as, Method 4110 B published in the 18th edition of ''Standard Methods for the Examination of Water and Wastewater'' (SMEWW) and AOAC-International Method 993.30 all of which were derived from EPA Method 300.0.

F. Cr (VI) by Ion Chromatography

Using the IC Cr(VI) Method (Method 218.6), an aqueous sample is filtered through a 0.45 μm filter and the filtrate is adjusted to a pH of 9 to 9.5 with a buffer solution. A measured volume of sample (50–250 μl) is introduced into the ion chromatograph. A guard column is employed to remove organics from the sample prior to separation of Cr(VI) as CrO_4^{-2} on an anion exchange separator column. Cr(VI) is determined by post column derivatization with diphenylcarbazide and passing through a low-volume flow-through cell and detection of the colored complex with a visible lamp detector at 530 nm.

EPA, in cooperation with ASTM Committee D–19 on Water, has conducted an interlaboratory validation study of EPA Method 218.6 ''Determination of Dissolved Hexavalent Chromium in Drinking Water, Ground Water, and Industrial Wastewater Effluents by Ion Chromatography''. The method description includes: Sample collection practices, recommended analytical conditions, quality control practices and method detection limits for Cr(VI), as well as performance criteria based on the interlaboratory study data.

ASTM, Standard Methods, and AOAC-International have approved this method as a standard test method under their consensus systems and have published it in their manuals of methods. EPA also proposes to approve the ASTM Method D–5257, Standard Methods Method 3500–Cr E, and

Method 993.23 from the AOAC-International Official Methods of Analysis, 16th Edition. All three of these methods were derived from EPA Method 218.6.

G. Method for Determination of Low Level Residual Chlorine

EPA is proposing to additionally approve SMEWW, Method 4500–Cl E for the detection and quantification of low levels of chlorine in water. This method is a minor modification of the approved amperometric Method 4500–Cl D and is capable of measuring down to 10 μg/L chlorine. Federal and State permitting authorities have requested such a method in order to assess compliance with effluent limits based on EPA and State water quality criteria for chlorine. Supporting performance data for the method can be found at Journal of the Water Pollution Control Federation, Vol. 51, pages 2636–2640 (1979), a copy of which is included in the docket for this proposal.

H. Replacement of Mercury Catalyst in Total Kjeldahl Nitrogen Methods

Due to demonstrated toxic hazards of mercuric sulfate, and difficulty of disposal of laboratory wastes, EPA is proposing to replace this chemical with copper sulfate in the total Kjeldahl Nitrogen Methods. Copper sulfate exhibits significantly less toxicity than mercuric sulfate. The European community has already eliminated mercuric chloride from their total nitrogen methods in favor of less toxic catalysts.

I. EPA is proposing to amend EPA Method 180.1—Turbidity by accepting the use of styrene divinylbenzene beads (AMCO–AEPA–1 Standard) as a substitute for the presently used formazine standard, which is prepared from hydrazine sulfate. The AEPA–1 Standard is an alternate to formazine in the previously approved Standard Methods, Method 2130 B. This substitution will eliminate the need to use hydrazine sulfate, a known carcinogen.

J. EPA is proposing to delete liquid-liquid extraction (LLE) methods, including EPA Methods 611 and 625 and Standard Methods Method 6410 B, as approved procedures for 1,2-dichlorobenzene, 1,3-dichlorobenzene, and 1,4-dichlorobenzene. While these compounds can be determined by these LLE methods, due to their volatility, significant losses can occur when using the prescribed sample collection procedures in the LLE methods resulting in low recovery of these compounds. These compounds are more properly analyzed by EPA Method 624 or Method 1625 (an isotope-dilution method that compensates for any evaporation losses).

K. EPA proposes to delete extraneous method citations, including those EPA methods that reference another source for method details and certain older EPA methods that are readily available from another source. Some measurement technologies are proposed for removal because they are no longer supported by the group that authored them or they use toxic reagents. EPA plans to provide an 18-month transition period after final rule to permit continued use of these methods following the practice of the drinking water program (see 59 FR 62456). These deletions include: colorimetric methods for cadmium, lead and zinc (dithizone), copper (neocuprione), nickel (heptoxime), nitrate-nitrite (automated hydrazine), potassium (cobaltinitrite), vanadium (gallic acid); AA furnace methods for gold, iridium, platinum, rhodium, ruthenium, titanium, and zinc; flame phometric methods for potassium and sodium; voltametry for cadmium and lead; titration (mercuric nitrate) for chloride; and the AA chelation-extraction for total chromium. Table IB of Part 136(a) would be further revised to reorder and clarify footnotes and method citations.

IV. Request for Comments

The Agency requests general comments on its policy to remove or reject methods from this regulation on the basis of pollution prevention when comparable approved methods are available. Comments on the specific methods removed today are also solicited, as well as, comments on other pollution prevention changes that should be considered by the Agency. EPA considered the elimination of the Nessler method for Total Kjeldahl because the Nessler reagent contains 10% mercuric iodide. However, an assessment of the data submitted by participants in recent Water Pollution (WP) performance evaluation studies indicated that the Nessler method is broadly used and produces above-average data compared to the other approved methods. Further, the Nessler method may be necessary to this regulation because it is more sensitive than the other methods. The Agency requests comments on whether the Nessler methods should be removed from Part 136.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulation is ''significant'' and, therefore subject to OMB review and the requirements of the Executive Order. EPA has determined that this regulation is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This rule will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This proposed rule simply specifies analytical techniques which may be used by laboratories in measuring concentrations of certain metals and, therefore, has no adverse economic impacts.

B. Regulatory Flexibility Act

This proposed amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it will not have a significant economic impact on a substantial number of small entities. The procedures proposed in this rule give all laboratories the flexibility to use the new proposed procedures or already approved alternate procedures.

C. Paperwork Reduction Act

This proposed rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany rules where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local or tribal governments, or the private sector, from this proposed rule will be far less than $100 million. This proposed rule should have minimal impact, if any, on the existing regulatory burden imposed on NPDES permittees required to monitor for regulated pollutants because the proposed rule would merely make additional options

available to the laboratory analyst conducting an existing approved test method. EPA has determined that an unfunded mandates statement therefore is unnecessary. Similarly, the methods proposed today do not establish any regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: October 10, 1995.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA proposes to amend part 136 of title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, et seq. (33 U.S.C. 1251 et seq. (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3(a) is proposed to be amended by revising Table IB to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, Units and Method	EPA[1]	Reference (Method No. or Page)			
		Std. Methods 18th Ed.	ASTM	USGS[2]	AOAC-international[3] and others
1. Acidity, as $CaCO_3$, mg/L:					
Electrometric or phenolphthalein endpoint		2310 B(4a)	D1067–92		
2. Alkalinity, as $CaCo_3$, mg/L:					
Electrometric or colorimetric titration to pH 4.5, Manual, or		2320 B	D1067–92	I–1030–85	973.43
Automated	[15]310.215			I–2030–85	
3. Aluminum—Total[4], mg/L:					
Digestion [5,6] followed by:					
AA direct aspiration		3111 D		I–3051–85	
AA graphite furnace	200.9	3113 B			
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES).	200.7	3120 B			
Inductively Coupled Plasma/Mass Spectrometry (ICP/MS)	200.8				993.14
Direct Current Plasma (DCP), or			D4190–82(88)		Note 16
Colorimetric (Eriochrome cyanine R)		3500–Al D			
4. Ammonia (as N), mg/L:					
Manual, distillation (at pH 9.5)[7], followed by:	350.1	4500–NH_3 B			973.49
Nesslerization		4500–NH_3 C	D1426–93(A)	I–3520–85	973.49
Titration		4500–NH_3 E			
Electrode		4500–NH_3 F or G	D1426–93(B)		
Automated phenate, or	350.1	4500–NH_3 H		I–4523–85	
Automated electrode					Note 17
5. Antimony-Total[4], mg/L:					
Digestion[5 6] followed by:					
AA direct aspiration		3111 B			
AA graphite furnace	200.9	3113 B			
ICP/AES, or	200.7	3120 B			
ICP/MS	200.8				993.14
6. Arsenic-Total[4], mg/L:					
Digestion[5 6] followed by:					
AA gaseous hydride		3114 B 4.d	D2972–93(B)	I–3062–85	
AA graphite furnace	200.9	3113 B	D2972–93(C)		
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
Colorimetric (SDDC)			D2972–93(A)	I–3060–85	
7. Barium—Total[4] mg/L:					
Digestion[5 6] followed by:					
AA direct aspiration		3111 D		I–3084–85	
AA graphite furnace		3113 B	D4382–91		
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
DCP					Note 16
8. Beryllium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 D	D3645–93(A)	I–3095–85	
AA graphite furnace	200.9	3113 B	D3645–93(B)		
ICP/AES	200.7	3120 B			
ICP/MS	200.8				993.14
DCP, or			D4190–82(88)		Note 16
Colorimetric (aluminon)		3500–Be D			
9. Biochemical oxygen demand (BOD_5), mg/L:					
Dissolved Oxygen Depletion		5210 B			973.44, p.17[18]

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, Units and Method	EPA[1]	Reference (Method No. or Page)			
		Std. Methods 18th Ed.	ASTM	USGS[2]	AOAC-international[3] and others
10. Boron[8]—Total, mg/L:					
Colorimetric (curcumin)		4500–B B		I–3112–85	
ICP/AES, or	200.7	3120 B			
DCP.			D4190–82(88)		Note 16
11. Bromide, mg/L;					
Titrimetric, or			D1246–82(88)(C)	I–1125–85	p. S44[19]
Ion Chromatography	300.0	4110 B	D4327–91		993.30
12. Cadmium—Total[4], mg/L:					
Digestion[5,6] followed by:					
AA direct aspiration		3111 B or C	D3557–90(A or B)	I–3135–85 or I–3136–85	974.2 p. 37[18]
AA graphite furnace	200.9	3113 B	D3557–90(D)		
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
DCP			D4190–82(88)		Note 16
13. Calcium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 B	D511–93(B)	I–3152–85	
ICP/AES	200.7	3120 B			
DCP, or					Note 16
Titrimetric (EDTA)		3500–Ca D	D511–93(A)		
14. Carbonaceous biochemical oxygen demand (CBOD[5]), mg/L[9]		5210 B			
Dissolved Oxygen Depletion with nitrification inhibitor					
15. Chemical oxygen demand (COD), mg/L:					
Titrimetric, or	410.3[15]	5220 B	D1252–88(A)	I–3560–85, I–3562–85	973.46, p. 17[18]
Spectrophotometric, manual or automated	410.4	5220 D	D1252–88(B)	I–3561–85	Notes 20, 21
16. Chloride, mg/L:					
Titrimetric (silver nitrate)		4500–Cl B	D512–89(B)	I–1183–85	
Colorimetric, Manual, or				I–1187–85	
Automated (Ferricyanide), or		4500–Cl-E		I–2187–85	
Ion Chromatography	300.0	4110 B	D4327–91		993.30
17. Chlorine—Total residual, mg/L:					
Titrimetric: Amperometric direct		4500–Cl D or E	D1253–86(92)		
Iodometric direct		4500–Cl B			
Back titration either end-point[10]		4500–Cl C			
DPD-FAS		4500–Cl F			
Spectrophotometric (DPD), or		4500–Cl G			
Electrode					Note 22
18. Chromium VI dissolved, mg/L:					
0.45 micron filtration followed by:					
AA chelation-extraction		3111 C		I–1232–85	
Ion Chromatography, or	218.6	3500–Cr E[23]	D5257–93		993.23
Colorimetric (Diphenylcarbazide)		3500–Cr D	D1687–92(A)	I–1230–85	
19. Chromium—Total[4], mg/L:					
Digestion[5,66] followed by:					
AA direct aspiration			D1687–92(B)	I–3236–85	974.27
AA graphite furnace	200.9	3113 B	D1687–92(C)		
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
DCP			D4190–82(88)		Note 16
Colorimetric (Diphenylcarbazide)		3500–Cr D			
20. Cobalt—Total[4], mg/L:					

Digestion [5] followed by:					
AA direct aspiration	.....	3111 B or C	D3558–90(A or B)	I–3239–85	p.37 [18]
AA graphite furnace	200.9	3113 B	D3558–90(C)	.....	
ICP/AES	200.7	3120 B	.....	.....	
ICP/MS, or	200.8	.....	.....	.....	993.14
DCP	.....	.....	D4190–82(88)	.....	Note 16
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI)	.....	2120 E	.....	.....	Note 24
Colorimetric (Platinum cobalt), or	.....	2120B	.....	I–1250–85	
Spectrophotometric	.....	2120 C	.....	.....	
22. Copper—Total [4], mg/L:					
Digestion [5,6] followed by:					
AA direct aspiration	.....	3111 B or C	D1688–90(A or B)	I–3270–85 or I–3271–85	974.27p.37 [18]
AA graphite furnace	200.9	3113 B	D1688–90(C)		
ICP/AES	200.7	3120 B	.....	.....	
ICP/MS	200.8	.....	.....	.....	993.14
DCP, or	.....	.....	D4190–82(88)	.....	Note 16
Colorimetric (Bicinchoninate)	.....	.....	.....	.....	Note 25
23. Cyanide—Total, mg/L:					
Manual distillation [11] with $MgCl_2$ followed by:	335.4	4500–CN C	D2036–91(A)	.....	
Titrimetric	.....	4500–CN D	.....	.....	p.22 [19]
Spectrophotometric, manual or	.....	4500–CN E	D2036–91(A)	I–3300–85	
Spectrophotometric, automated	335.4	.....	.....	.....	
24. Cyanide amenable to chlorination, mg/L:					
Manual distillation with $MgCl_2$, followed by titrimetric or spectrophotometric.	.....	4500–CN G	D2036–91(B)	.....	
25. Fluoride—Total, mg/L:					
Manual distillation [7], followed by:	.....	4500–F B	.....	.....	
Electrode, Manual	.....	4500–F C	D1179–93(B)	.....	
Electrode, Automated	.....	.....	.....	I–4327–85	
Colorimetric (SPADNS)	.....	4500–F D	D1179–93(A)	.....	
Colorimetric (Auto complexone), or	.....	4500–F-E	.....	.....	
Ion Chromatography	300.0	4110 B	D4327–91	.....	993.30
26. Gold—Total [4], mg/L:					
Digestion [5] followed by:					
AA direct aspiration, or	.....	3111 B	.....	.....	
DCP	.....	.....	.....	.....	Note 16
27. Hardness—Total, as $CaCO_3$, mg/L:					
Automated colorimetric	130.1 [15]	.....	.....	.....	
Titrimetric (EDTA), or	.....	2340 B or C	D1126–86(92)	I–1338–85	973.52B
Ca plus Mg as their carbonates, by ICP/AES, AA direct aspiration, or DCP. (Parameters 13 and 33).					
28. Hydrogen ion (pH), pH units:					
Electrometric measurement, or	.....	4500–H+ B	D1293–84(90) (A or B)	I–1586–85	973.41
Automated electrode	150.2 [15]	.....	.....	.....	Note 26
29. Iridium—Total [4], mg/L:					
Digestion [5] followed by:					
AA direct aspiration	.....	3111 B	.....	.....	
30. Iron—Total [4], mg/L:					
Digestion [5,6] followed by:					
AA direct aspiration	.....	3111 B D	D1068–90(A or B)	I–3381–85	974.27
AA graphite furnace	200.9	3113 B	D1068–90(C)	.....	
ICP/AES	200.7	3120 B	.....	.....	
DCP, or	.....	.....	D4190–82(88)	.....	Note 16
Colorimetric (Phenanthroline)	.....	.....	.....	.....	Note 27
31. Kjeldahl nitrogen—Total, (as N), mg/L:					
Digestion [12] and distillation.					

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, Units and Method	EPA[1]	Reference (Method No. or Page)			
		Std. Methods 18th Ed.	ASTM	USGS[2]	AOAC-international[3] and others
followed by:	.....	4500–N_{org} B or C ...	D3590–89(A)	.....	
Titration	.....	4500–NH_3 E	D3590–89(A)	.....	973.48
Nesslerization, or	.....	4500–NH_3 C	D3590–89(A)	.....	
Electrode	.....	4500–NH_3 F or G	.....	.	
Colorimetric (Automated phenate)[12]	I351.1[15]	.....	.....	.....	
Semi-automated block digestor[12] colorimetric, or	351.2	.....	D3590–89(B)	.....	
Manual or block digestor[12] potentiometric	.....	.....	D3590–89(A)	.....	
Block digestor, followed by: Auto distillation and Titration, or	.....	.....	.....	.....	Note 28
Nesslerization or	.....	.....	.....	.....	Note 29
Flow injection gas diffusion	.....	.....	.....	.....	Note 30
32. Lead—Total[4], mg/L:					
Digestion[5 6] followed by:					
AA direct aspiration	.....	3111 B or C	D3559–90(A or B)	I–3399–85	974.27
AA graphite furnace	200.9	3113 B	D3559–90(D)	.....	
ICP/AES	200.7	3120 B	.....	.....	
ICP/MS, or	200.8	.....	.....	.....	993.14
DCP	.....	.....	D4190–82(88)	.....	Note 16
33. Magnesium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration	.....	3111 B	D511–93(B)	I–3447–85	974.27
ICP/AES	200.7	3120 B	.....	.....	
DCP	.....	.....	.....	.....	Note 16
Gravimetric	.....	3500-Mg D	.....	.....	
34. Manganese—Total[4], mg/L:					
Digestion[5,6] followed by:					
AA direct aspiration	.....	3111 B	D858–90(A or B)	I–3454–85	974.27
AA graphite furnace	200.9	3113 B	D858–90(C)	.....	
ICP/AES	200.7	3120 B	.....	.....	
ICP/MS	200.8	.....	.....	.....	993.14
DCP	.....	.....	D4190–82(88)	.....	Note 16
Colorimetric (Persulfate), or	.....	.....	.....	.....	920.203
Colorimetric (Periodate)	.....	.....	.....	.....	Note 31
35. Mercury—Total[4], mg/L					
Cold vapor, manual, or	245.1	3112 B	D3223–91	I–3462–85	977.22
Cold vapor, automated	245.2	.....	.....	.....	
36. Molybdenum—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration	.....	3111 D	.....	I–3490–85	
AA graphite furnace	.....	3113 B	.....	.....	
ICP/AES	200.7	3120B	.....	.....	
ICP/MS, OR	200.8	.....	.....	.....	993.14
DCP	.....	.....	.....	.....	Note 16
37. Nickel—Total[4], mg/L:					
Digestion[5 6] followed by:					
AA direct aspiration	.....	3111 B or C	D1886–90(A or B)	I–3499–85	
AA graphite furnace	200.9	3113 B	D1886–90(C)	.....	
ICP/AES	200.7	3120 B	.....	.....	
ICP/MS, or	200.8	.....	.....	.....	993.14
DCP	.....	.....	D4190–82(88)	.....	Note 16
38. Nitrate (as N), mg/L:					
Colorimetric (Brucine sulfate)	[15]352.1	.....	.....	.....	973.50, p.28[18]

Ion Chromatography, or	300.0	4110 B	D4327–91		993.30
Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40)					
39. Nitrate-nitrite (sum as N), mg/L:					
Cadmium reduction, Manual		4500–NO_3 E	D3867–90(B)		
Cadmium reduction, Automated, or	353.2	4500–NO_3 F	D3867–90(A)	I–4545–85	
Ion Chromatography	300.0	4110 B	D4327–91		993.30
40. Nitrite (as N), mg/L:					
Spectrophotometric, Manual, or		4500–NO_2 B			Note 32
Automated (Diazotization)				I–4540–85	
Cadmium reduction, Manual		4500–NO_3 E	D3867–90(B)		
Cadmium reduction, Automated, or	353.2	4500–NO_3 F	D3867–90(A)	I–4545–85	
Ion Chromatography	300.0	4110 B	D4327–91		993.30
41. Oil and grease—Total recoverable, mg/L:					
Gravimetric (extraction)	413.1	5520–B [33]			
42. Organic carbon—Total (TOC), mg/L:					
Combustion or oxidation		5310–B,C or D	D2579–93(A or B)		973.47, p.14 [35]
43. Organic nitrogen (as N), mg/L:					
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4)					
44. Orthophosphate (as P), mg/L:					
Ascorbic acid method:					
Automated, or	365.1	4500–P F		I–4601–85	973.56
Manual single reagent		4500–P E	D515–88(A)		973.55
Manual two reagent, or	365.3 [15]				
Ion Chromatography	300.0	4110 B	D4327–91		993.30
45. Osmium—Total,[4] mg/L:					
Digestion [5] followed by:					
AA direct aspiration, or		3111 D			
AA graphite furnace					
46. Oxygen dissolved, mg/L:					
Winkler (Azide modification), or		4500–O C	D888–92(A)		973.45B
Electrode		4500–O G	D888–92(B)		
47. Palladium—Total,[4] mg/L:					
Digestion[5] followed by:					
AA direct aspiration,		3111 B			p.S27 [19]
AA graphite furnace, or				p.S28 [19].	
DCP					Note 16
48. (Reserved)					
49. Phenols, mg/L:					
Manual distillation,[13] followed by					
Colorimetric (4AAP) manual, or	[15] 420.1				Note 35
Colorimetric (4AAP) Automated	420.4				
50. Phosphorus (elemental), mg/L Gas-liquid chromatography					Note 36
51. Phosphorus—Total, mg/L:					
Persulfate digestion followed by:		4500–P B,5			973.55
Ascorbic acid reduction, Manual, or	365.3 [15]	4500–P E	D515–88(A)		
Automated	365.1	4500–P F		I–4600–85	973.56
Semi-automated block digestor			D515–88(B)		
52. Platinum—Total [4], mg/L;					
Digestion [5] followed by:					
AA direct aspiration, or		3111 B			
DCP					Note 16
53. Potassium—Total [4], mg/L;					
Digestion [5] followed by:					
AA direct aspiration, or		3111 B		I–3630–85	973.53
ICP/AES	200.7	3120 B			
54. Residue—Total, mg/L:					
Gravimetric, 103–105°		2540 B		I–3750–85	
55. Residue—filterable, mg/L;					
Gravimetric, 180°		2540 C		I–1750–85	

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, Units and Method	EPA[1]	Reference (Method No. or Page)			
		Std. Methods 18th Ed.	ASTM	USGS[2]	AOAC-international[3] and others
56. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105° post washing of residue		2540 D		I–3765–85	
57. Residue—settleable, mg/L:					
Volumetric (Imhoff cone), or Gravimetric		2540 F			
58. Residue—Volatile, mg/L:					
Gravimetric, 550° C	160.4[15]			I–3753–85	
59. Rhodium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 B			
60. Ruthenium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 B			
61. Selenium—Total[4], mg/L:					
Digestion[5,6] followed by:					
AA graphite furnace	200.9	3113 B	D3859–93(B)		
AA gaseous hydride		3114 B	3859–93(A)	I–3667–85	
ICP/AES, or	200.7	3120 B			
ICP/MS	200.8				993.14
62. Silica[8] Dissolved, mg/L:					
0.45 micron filtration followed by:					
Colorimetric , Manual, or		4500–Si D	D859–88	I–1700–85	
Automated (Molybdosilicate), or				I–2700–85	
ICP	200.7	3120 B			
63. Silver—Total[4], mg/L:					
Digestion[5,14] followed by:					
AA direct aspiration		3111 B or C			974.27, p.37[18]
AA graphite furnace	200.9	3113 B			
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
DCP					Note 16
64. Sodium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 B		I–3735–85	973.54
ICP/AES, or	200.7	3120 B			
DCP					Note 16
65. Specific conductance, micromhos/cm at 25°C:					
Wheatstone bridge		2510 B	D1125–91(A)	I–1780–85	973.40
66. Sulfate (as SO_4), mg/L:					
Colorimetric, Automated (Barium chloranilate)	375.1[15]				
Gravimetric		4500–SO_4^{-2} C or D			925.54
Turbidimetric, or		4500–SO_4^{-2} E	D516–90		
Ion Chromatography	300.0	4110 B	D4327–91		993.30
67. Sulfide (as S), mg/L:					
Titrimetric (iodine), or		4500–S^{-2} E		I–3840–85	
Colorimetric (methylene blue)		4500–S^{-2} D			
68. Sulfite (as SO_3), mg/L:					
Titrimetric (iodine-iodate)		4500–SO_3^{-2} B			
69. Surfactants, mg/L:					
Colorimetric (methylene blue)		5540 C	D2330–88		
70. Temperature, °C:					

Thermometric		2550 B			Note 37
71. Thallium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 B			
AA graphite furnace	200.9				
ICP/AES, or	200.7	3120 B			
ICP/MS	200.8				993.14
72. Tin—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration,		3111 B			
AA graphite furnace, or	200.9	3113 B.			
ICP/AES	200.7	.			
73. Titanium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 D			
ICP/AES, or	200.7				
DCP					Note 16
74. Turbidity, NTU:					
Nephelometric	180.1	2130 B	D1889–88(A)	I–3860–85	
75. Vanadium—Total[4], mg/L:					
Digestion[5] followed by:					
AA direct aspiration		3111 D			
AA graphite furnace			D3373–93		
ICP/AES	200.7	3120 B			
ICP/MS, or	200.8				993.14
DCP				D4190–82(88)	Note 16
76. Zinc—Total[4], mg/L:					
Digestion[5,6] followed by:					
AA direct aspiration		3111 (B or C)	D1691–90 (A or B)	I–3900–85	974.27, p. 37[18]
ICP/AES	200.7	3120 B			
ICP/MS	200.8				993.14
DCP, or			D4190–82(88)		Note 16
Colorimetric (zincon)		3500–Zn F			Note 38

Table IB—Notes

[1] "Methods for the Determination of Metals in Environmental Samples", Supplement I, EMSL–CI, EPA/600/R–94/111, May 1994; and "Methods for the Determination of Inorganic Substances in Environmental Samples", EMSL–CI, EPA/600/R–93/100, August, 1993.

[2] Fishman, M. J., et al., "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments", U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey (USGS), Denver, CO, Revised 1989.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists", methods manual, 16th ed (1995).

[4] For the determination of total metals the sample is not filtered before processing and a digestion procedure is required a) to solubilize analytes in the suspended material and b) to render the analyte available for analysis when colorimetric methods are used.

[5] For non-platform graphite furnace atomic absorption determinations a digestion using nitric acid is reguired prior to analysis. The procedure used should subject the sample to gentle, acid refluxing and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption determinations (FLAA) a combination acid (nitric and hydrochloric acids) digestion is preferred prior to analysis. Such a digestion is described as Method 200.2 in Supplement I of "Methods for the Determination of Metals in Environmental Samples" EPA–600/R–94/111 May, 1994. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required and in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or the EPA spectrochemical techniques (platform furnace AA, ICP–AES, and ICP–MS) the appropriate sample digestion procedure to be used is included in the referenced Standard Methods, ASTM, Fisons, or EPA methods, respectively.

[6] The digestion procedure "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992, is acceptable for use with any AA direct aspiration, ICP/AES, or DCP measurement system listed for this parameter. Available from the CEM Corporation.

[7] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary; however, manual distillation will be required to resolve any controversies.

[8] When determining boron and silica, only plastic, PFTE, or quartz labware may be used from start until completion of the analysis.

[9] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test which measures "total BOD". The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using the nitrification inhibitor.

[10] The back titration method will be used to resolve controversy.

[11] When using EPA digestion procedure, must use EPA determinative procedure. When using Standard Methods digestion procedure, must use Standard Methods determinative procedure.

[12] Copper sulfate or other mercury-free catalyst shown to be effective must be used in place of mercuric sulfate in the digestion step.

[13] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[14] The digestion procedures in the approved Standard Methods direct aspiration flame atomic absorption and inductively coupled plasma-atomic emission spectrometry methods are useful for the analysis of silver up to concentrations of 1 mg/l. However, where silver concentrations > 1 mg/L exist as an inorganic halide the referenced methods sample preparation procedures are inadequate. For sample preparation in these situations a well-mixed representative 20 ml sample aliquot should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH prior to analysis by direct aspiration flame atomic absorption. Calibration standards should be prepared in the same manner. The approved EPA methods are useful for the analysis of silver up to concentrations of 0.1 mg/L.

[15] ''Methods for Chemical Analysis of Water and Wastes'', U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), Cincinnati, OH, EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[16] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AE50029'', 1986—Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[17] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[18] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[19] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency'', Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[20] OIC Chemical Oxygen Demand Method Oceanography International Corporation, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[21] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[22] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138.

[23] ''Standard Method for the Examination of Water and Wastewater—Supplement to the 18th Edition'', 1994.

[24] National Council of the Paper Industry for Air and Stream Improvement (Inc.), Technical Bulletin 253, December 1971.

[25] Copper, Biocinchoninate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Technicon AutoAnalyzer II, Technicon Industrial Systems, Tarrytown, NY 10591.

[27] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O.Box 389, Loveland, CO 80537.

[28] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, Perstop Analytical.

[29] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, Perstop Analytical.

[30] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, Perstop Analytical.

[31] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[32] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[33] Only the trichlorotrifluoroethane extraction solvent option is approved.

[34] Wershaw, R.L., et al, ''Methods for Analysis of Organic Substances in Water'', Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3 (1972 Revised 1987), p.14.

[35] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrophotometric procedure.

[36] R. F. Addison and R. G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography'', Journal of Chromatography, vol. 47, No. 3, pp. 421–426, 1970.

[37] Stevens, H. H., Ficke, J. F., and Smoot, G. F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation'', U.S. Geological Survey, Techniques of Water Resources Investigations, Book 1, Chapter D1, 1975.

[38] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

3. Section 136.3(a) is proposed to be amended by revising entries 35–37 of Table IC to read:

136.3 Identification of Test Procedures.

* * * * *

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA Method Number [2, 7]			Standard methods 18th Ed.	ASTM	Other
	GC	GC/MS	HPLC			
* *		*	*	*	*	*
35. 1,2-Dichlorobenzene	601,602	624, 1625	—	6220 B, 6230 B.		
36. 1,3-Dichlorobenzene	601,602	624, 1625	—	6220 B, 6230 B.		
37. 1,4-Dichlorobenzene	601,602	624, 1625	—	6220 B, 6230 B.		
* *		*	*	*	*	*

Table 1C Notes

[1] All parameters are expressed in micrograms per liter (μg/L).

[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit'' of this Part 136.

* * * * * * *

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures in section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for Methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. **Note:** These warning limits are promulgated as an ''interim final action with a request for comments.''

* * * * * * *

4. Section 136.3(b) is proposed to be amended by revising references 1 through 38 and adding references 39 and 40 to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations

(1) The full text of Methods 601–613, 624, 625, 1624, and 1625 are printed in appendix A of this part 136. The full text for determining the method detection limit when using the test procedures is given in appendix B of this part 136. Table IC, Note 7; and Table ID, Note 2.

(2) ''Microbiological Methods for Monitoring the Environment, Water and Wastes,'' U.S. Environmental Protection Agency, EPA–600/8–78–017, 1978. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Table IA. Note 2.

(3) ''Methods for Chemical Analysis of Water and Wastes,'' U.S. Environmental Protection Agency, EPA 600/4–79–020, March 1979, or ''Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA–600/4–79–020, Revised March 1983. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Table IB, Note 15.

(4) ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, 1978. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Table IC, Note 3; Table D, Note 3.

(5) ''Prescribed Procedures for Measurement of Radioactivity in Drinking Water,'' U.S. Environmental Protection Agency, EPA–600/4–80–032, 1980. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Table IE, Note 1.

(6) ''Standard Methods for the Examination of Water and Wastewater'', Joint Editorial Board, American Public Health Association, American Water Works Association, and Water Environment Federation, 18th Edition, 1992. Available from: American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005, Cost $160.00. Table IA, IB, IC, ID and IE.

(7) (Reserved)

(8) Ibid, 14th Edition, 1975. Table IB, Note 35.

(9) ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency Supplement to the 15th Edition of Standard Methods for the Examination of Water and Wastewater, 1981. Available from: American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20036. Cost available from publisher. Table IB, Note 19; Table IC, Note 6; Table ID, Note 6.

(10) ''Annual Book of Standards—Water and Environmental Technology'', Section 11, Parts 11.01 Water (I) and 11.02 Water (II), American Society for Testing and Materials, 1994. 1916 Race Street, Philadelphia, PA 19103. Cost available from publisher. Tables IB, IC, ID, and IE.

(11) ''Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples,'' edited by Britton, L.J. and P.E. Greason, Techniques of Water Resources Investigations, of the U.S. Geological Survey, Book 5, Chapter A4 (1989). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $9.25 (subject to change). Table IA.

(12) ''Methods for Determination of Inorganic Substances in Water and Fluvial Sediments,'' by M.J. Fishman and Linda C. Friedman, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5 Chapter A1 (1989). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost $108.75 (subject to change). Table IB, Note 2.

(13) (Reserved)

(14) ''Methods for the Determination of Organic Substances in Water and Fluvial Sediments, Wershaw, R.L., et al., Techniques of Water-Resources

Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425. Cost: $0.90 (subject to change). Table IB, Note 34, Table ID, Note 4.

(15) ''Water Temperature-Influential Factors, Field Measurement and Data Presentation,'' by H.H. Stevens, Jr., J. Ficke, and G.F. Smoot, Techniques of Water Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225, Cost: $1.60 (subject to change). Table IB, Note 37.

(16) ''Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters, by M.J. Fishman and Eugene Brown; U.S. Geological Survey Open File Report 76–77 (1976). Available from: U.S. Geological Survey, Branch of Distribution, 1200 South Eads Street, Arlington, VA 22202. Cost: $13.50 (subject to change). Table IE, Note 2.

(17) ''Official Methods of Analysis of AOAC-International'', 16th Edition (1995). Price: $359.00. Available from: AOAC-International, 1970 Chain Bridge Rd., Dept. 0742, McLean, VA 22109–0742. Table IB, Note 3.

(18) ''American National Standard on Photographic Processing Effluents,'' April 2, 1975. Available from: American National Standards Institute, 1430 Broadway, New York, New York 10018. Table IB, Note 18.

(19) ''An Investigation of Improved Procedures for Measurement of Mill Effluent and Receiving Water Color, NCASI Technical Bulletin No. 253, December 1971. Available from: National Council of the Paper Industry for Air and Stream Improvements, Inc., 260 Madison Avenue, New York, NY 10016. Cost available from publisher. Table IB, Note 24.

(20) Ammonia, Automated Electrode Method, Industrial Method Number 379–75WE, dated February 19, 1976. Technicon Auto Analyzer II. Method and price available from Technicon Industrial Systems, Tarrytown, New York 10591. Table IB, Note 17.

(21) Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979. Method price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 21.

(22) OIC Chemical Oxygen Demand Method, 1978. Method and price available from Oceanography International Corporation, 512 West Loop, P.O. Box 2980, College Station, Texas 77840. Table IB, Note 20.

(23) ORION Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977. Method and price available from ORION Research Incorporation, 840 Memorial Drive, Cambridge, Massachusetts 02138. Table IB, Note 22.

(24) Bicinchoninate Method for Copper. Method 8506, Hach Handbook of Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 300, Loveland, Colorado 80537. Table IB, Note 25.

(25) Hydrogen Ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA. October 1976. Bran & Luebbe (Technicon) Auto Analyzer II. Method and price available from Bran & Luebbe Analyzing Technologies, Inc. Elmsford, N.Y. 10523. Table IB, Note 26.

(26) 1,10–Phenanthroline Method using FerroVer Iron Reagent for Water, Hach Method 8008, 1980. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 27.

(27) Periodate Oxidation Method for Manganese, Method 8034, Hach Handbook for Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 31.

(28) Nitrogen, Nitrite-Low Range, Diazotization Method for Water and Wastewater, Hach Method 8507, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 32.

(29) Zincon Method for Zinc, Method 8009, Hach Handbook for Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 38.

(30) ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography,'' by R.F. Addison and R.G. Ackman, Journal of Chromatography, Volume 47, No. 3, pp. 421–426, 1970. Available in most public libraries. Back volumes of the Journal of Chromatography are available from Elsevier/North-Holland,Inc., Journal Information Center, 52 Vanderbilt Avenue, New York, NY 10164. Cost available from publisher, Table IB, Note 36.

(31) ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes'', Method AES 0029, 1986–Revised 1991. Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923. Table IB, Note 16.

(32) ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals, CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106–0200, April 16, 1992. Available from the CEM Corporation. Table IB, Note 6.

(33) Reserved.

(34) ''Organochlorine Pesticides and PCB's in Wastewater Using Empore™ Disk'', Test Method 3M 0222, Revised 10/28/94. 3M Corporation, 3M Center Building 220–9E–10, St. Paul, MN 55144–1000. Method available from 3M Corporation. Tables IC and ID, Note 9.

(35) ''Nitrogen, Total Kjeldahl, Method PAI-DK01 (Block Digestion, Steam Distillation, Titrimetric Detection)'', revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, P.O. Box 648, Wilsonville, OR 97070. Table IB, Note 28.

(36) ''Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection)'', revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, P.O. Box 648, Wilsonville, OR 97070. Table IB, Note 29.

(37) ''Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion)'', revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, P.O. Box 648, Wilsonville, OR 97070. Table IB, Note 30.

(38) Methods for the Determination of Metals in Environmental Samples, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268, EPA 600 R–94/111, May 1994. Table IB, Notes 1 and 5.

(39) ''Methods for the Determination of Inorganic Substances in Environmental Samples'', Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268, Revised EPA 600 R–93/100 August 1993. Table IB, Note 1.

(40) ''Standard Methods for the Examination of Water and Wastewater'', American Public Health Association, American Water Works Association, Water Environment Federation, 18th Edition Supplement, 1994. Table IB, Note 23.

5. Section 136.3 (e) is proposed to be amended by revising Table II to read as follows:

136.3 Identification of test procedures.

* * * * *

(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Test procedure table parameter number/name	Container [1]	Preservation procedure [2–4]	Maximum holding time [5]
Table IA—Biological Tests			
1. Coliform (fecal)	P,G	a,b [6]	6 hours.
2. Coliform (fecal), Pres. of chlorine	P,G	a,b [6]	6 hours.
3. Coliform (total)	P,G	a,b [6]	6 hours.
4. Coliform (total), Pres. of chlorine	P,G	a,b [6]	6 hours.
5. Fecal streptococci	P,G	a,b [6]	6 hours.
Table IB—Inorganic Tests			
1. Acidity	P,G	a	14 days.
2. Alkalinity	P,G	a	14 days.
3. Aluminum [7]	P,G	c	6 months.
4. Ammonia	P,G	a,d	28 days.
5. Antimony [7]	P,G	c	6 months.
6. Arsenic [7]	P,G	c	6 months.
7. Barium [7]	P,G	c	6 months.
8. Beryllium [7]	P,G	c	6 months.
9. Biochemical oxygen demand (BOD)	P,G	a	48 hours.
10. Boron [7]	P,G	c	6 months.
11. Bromide	P,G	e	28 days.
12. Cadmium [7]	P,G	c	6 months.
13. Calcium [7]	P,G	c	6 months.
14. Carbonaceous biochemical oxygen demand (CBOD)	P,G	a	48 hours.
15. Chemical oxygen demand (COD)	P,G	a,d	28 days.
16. Chloride	P,G	e	28 days.
17. Chlorine	P,G	e	Immediate.
18. Chromium VI (dissolved)	P,G	a	24 hours.
19. Chromium [7]	P,G	c	6 months.
20. Cobalt [7]	P,G	c	6 months.
21. Color	P,G	a	48 hours.
22. Copper [7]	P,G	c	6 months.
23. Cyanide	P,G	a,f [6],g	14 days.[8]
24. Cyanide amenable	P,G	a,f [6],g	14 days.[8]
25. Fluoride	P	e	28 days.
26. Gold [7]	P,G	c	6 months.
27. Hardness	P,G	c or d	6 months.
28. Hydrogen ion (pH)	P,G	e	Immediate.
29. Iridium [7]	P,G	c	6 months.
30. Iron [7]	P,G	c	6 months.
31. Kjeldahl nitrogen	P,G	a,d	28 days.
32. Lead [7]	P,G	c	6 months.
33. Magnesium [7]	P,G	c	6 months.
34. Manganese [7]	P,G	c	6 months.
35. Mercury	P,G	c	28 days.
36. Molybdenum [7]	P,G	c	6 months.
37. Nickel [7]	P,G	c	6 months.
38. Nitrate	P,G	a	48 hours.
39. Nitrate-nitrite	P,G	a,d	28 days.
40. Nitrite	P,G	a	48 hours.
41. Oil and grease	G	a; d or h	28 days.
42. Organic carbon	P,G	a; d or h or i	28 days.
43. Organic nitrogen	P,G	a,d	28 days.
44. Orthophosphate	P,G	a,j	48 hours.
45. Osmium [7]	P,G	c	6 months.
46. Oxygen, dissolved:			
By probe	G	e	Immediate.
By winkler	G bottle and top	k	8 hours. 4
47. Palladium [7]	P,G	c	6 months.
48. (Reserved)			
49. Phenols	G	a,d	28 days.
50. Phosphorus (elemental)	G	a	48 hours.
51. Phosphorus	P,G	a,d	28 days.
52. Platinum [7]	P,G	c	6 months.
53. Potassium [7]	P,G	c	6 months.
54. Residue, total	P,G	a	7 days.
55. Residue, filterable	P,G	a	7 days.
56. Residue, nonfilterable (TSS)	P,G	a	7 days.
57. Residue, settleable	P,G	a	48 hours.
58. Residue, Volatile	P,G	a	7 days.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Test procedure table parameter number/name	Container [1]	Preservation procedure [2–4]	Maximum holding time [5]
59. Rhodium [7]	P,G	c	6 months.
60. Ruthenium [7]	P,G	c	6 months.
61. Selenium [7]	P,G	c	6 months.
62. Silica [7]	P	a	28 days.
63. Silver [7]	P,G	c	6 months.
64. Sodium [7]	P,G	c	6 months.
65. Specific conductance	P,G	a	28 days.
66. Sulfate	P,G	a	28 days.
67. Sulfide	P,G	a,l,m	7 days.
68. Sulfite	P,G	e	Immediate.
69. Surfactants	P,G	a	48 hours.
70. Temperature.	P,G	e	Immediate.
71. Thallium [7]	P,G	c	6 months.
72. Tin [7]	P,G	c	6 months.
73. Titanium [7]	P,G	c	6 months.
74. Turbidity	P,G	a	48 hours.
75. Vanadium [7]	P,G	c	6 months.
76. Zinc [7]	P,G	c	6 months.
Table IC—Non-Pesticide Organic Compounds [9, 10]			
1. Acenaphthene	G,T	a,b [6],n	7 days.[11]
2. Acenaphthylene	G,T	a,b [6],n	7 days.[11]
3. Acrolein	G,T	a,o [6],p	14 days.[12]
4. Acrylonitrile	G,T	a,o [6]	14 days.
5. Anthracene	G,T	a,b [6],n	7 days.[11]
6. Benzene	G,T	a,h,o [6]	14 days.
7. Benzidine	G,T	a,b [6, 13]	7 days.[14]
8. Benzo(a)anthracene	G,T	a,b [6],n	7 days.[11]
9. Benzo(a)pyrene	G,T	a,b [6],n	7 days.[11]
10. Benzo(b)fluoranthene	G,T	a,b [6],n	7 days.[11]
11. Benzo(g,h,i)perylene	G,T	a,b [6],n	7 days.[11]
12. Benzo(k)fluoranthene	G,T	a,b [6],n	7 days.[11]
13. Benzyl chloride	G,T	a,o [6]	14 days.
14. Benzyl butyl phthalate	G,T	a	7 days.[11]
15. Bis(2-chloroethoxy) methane	G,T	a,b [6]	7 days.[11]
16. Bis(2-chloroethyl) ether	G,T	a,b [6]	7 days.[11]
17. Bis(2-ethylhexyl) phthalate	G,T	a	7 days.[11]
18. Bromodichloromethane	G,T	a,o [6]	14 days.
19. Bromoform	G,T	a,o [6]	14 days.
20. Bromomethane	G,T	a,o [6]	14 days.
21. 4-Bromophenylphenyl ether	G,T	a,b [6]	7 days.[11]
22. Carbon tetrachloride	G,T	a,o [6]	14 days.
23. 4-Chloro-3-methylphenol	G,T	a,b [6]	7 days.[11]
24. Chlorobenzene	G,T	a,o [6]	14 days.
25. Chloroethane	G,T	a,o [6]	14 days.
26. 2-Chloroethylvinyl ether	G,T	a,o [6]	14 days.
27. Chloroform	G,T	a,o [6]	14 days.
28. Chloromethane	G,T	a,o [6]	14 days.
29. 2-Chloronaphthalene	G,T	a	7 days.[11]
30. 2-Chlorophenol	G,T	a,b [6]	7 days.[11]
31. 4-Chlorophenylphenyl ether	G,T	a,b [6]	7 days.[11]
32. Chrysene	G,T	a,b [6],n	7 days.[11]
33. Dibenzo(a,h)anthracene	G,T	a,b [6],n	7 days.[11]
34. Dibromochloromethane	G,T	a,o [6]	14 days.
35. 1,2-Dichlorobenzene	G,T	a,o [6]	14 days.
36. 1,3-Dichlorobenzene	G,T	a,o [6]	14 days.
37. 1,4-Dichlorobenzene	G,T	a,h,o [6]	14 days.
38. 3,3-Dichlorobenzidine	G,T	a,b [6]	7 days.[13]
39. Dichlorodifluoromethane	G,T	a,o [6]	14 days.
40. 1,1-Dichloroethane	G,T	a,o [6]	14 days.
41. 1,2-Dichloroethane	G,T	a,o [6]	14 days.
42. 1,1-Dichloroethene	G,T	a,o [6]	14 days.
43. trans-1,2-Dichloroethene	G,T	a,o [6]	14 days.
44. 2,4-Dichlorophenol	G,T	a,b [6]	7 days.[11]
45. 1,2-Dichloropropane	G,T	a,o [6]	14 days.
46. cis-1,3-Dichloropropene	G,T	a,o [6]	14 days.
47. trans-1,3-Dichloropropene	G,T	a,o [6]	14 days.
48. Diethyl phthalate	G,T	a	7 days.[11]
49. 2,4-Dimethylphenol	G,T	a,b [6]	7 days.[11]
50. Dimethyl phthalate	G,T	a	7 days.[11]

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Test procedure table parameter number/name	Container [1]	Preservation procedure [2–4]	Maximum holding time [5]
51. Di-n-butyl phthalate	G,T	a	7 days.[11]
52. Di-n-octyl phthalate	G,T	a	7 days.[11]
53. 2,4-Dinitrophenol	G,T	a,b [6]	7 days.[11]
54. 2,4-Dinitrotoluene	G,T	a,b [6],n	7 days.[11]
55. 2,6-Dinitrotoluene	G,T	a,b [6],n	7 days.[11]
56. Epichlorohydrin	G,T	a,o [6]	14 days.
57. Ethylbenzene	G,T	a,h,o [6]	14 days.
58. Fluoranthene	G,T	a,b [6],n	7 days.[11]
59. Fluorene	G,T	a,b [6],n	7 days.[11]
60. Hexachlorobenzene	G,T	a	7 days.[11]
61. Hexachlorobutadiene	G,T	a	7 days.[11]
62. Hexachlorocyclopentadiene	G,T	a,b [6]	7 days.[11]
63. Hexachloroethane	G,T	a,b [6]	7 days.[11]
64. Ideno(1,2,3-cd)pyrene	G,T	a,b [6],n	7 days.[11]
65. Isophorone	G,T	a,b [6],n	7 days.[11]
66. Methylene chloride	G,T	a,o [6]	14 days.
67. 2-Methyl-4,6-dinitrophenol	G,T	a,b [6]	7 days,[11]
68. Naphthalene	G,T	a,b [6],n	7 days.[11]
69. Nitrobenzene	G,T	a,b [6],n	7 days.[11]
70. 2-Nitrophenol	G,T	a,b [6]	7 days.[11]
71. 4-Nitrophenol	G,T	a,b [6]	7 days.[11]
72. N-Nitrosodimethylamine	G,T	a,b [6],n	7 days.[11]
73. N-Nitrosodi-n-propylamine	G,T	a,b [6],n	7 days.[11]
74. N-Nitrosodiphenylamine	G,T	a,b [6],n [15]	7 days.[11]
75. 2,2-Oxybis(1-chloropropane)	G,T	a,b [6]	7 days.[11]
76. PCB–1016	G,T	a,b [6]	7 days.[11]
77. PCB–1221	G,T	a,b [6]	7 days.[11]
78. PCB–1232	G,T	a,b [6]	7 days.[11]
79. PCB–1242	G,T	a,b [6]	7 days.[11]
80. PCB–1248	G,T	a,b [6]	7 days.[11]
81. PCB–1254	G,T	a,b [6]	7 days.[11]
82. PCB–1260	G,T	a,b [6]	7 days.[11]
83. Pentachlorophenol	G,T	a,b [6]	7 days.[11]
84. Phenanthrene	G,T	a,b [6],n	7 days.[11]
85. Phenol	G,T	a,b [6]	7 days.[11]
86. Pyrene	G,T	a,b [6],n	7 days.[11]
87. 2,3,7,8-Tetrachlorodibenzo-p-dioxin	G,T	a,b [6]	7 days.[11]
88. 1,1,2,2-Tetrachloroethane	G,T	a,o [6]	14 days.
89. Tetrachloroethene	G,T	a,o [6]	14 days.
90. Toluene	G,T	a,h,o [6]	14 days.
91. 1,2,4-Trichlorobenzene	G,T	a,o [6]	14 days.
92. 1,1,1-Trichloroethane	G,T	a,o [6]	14 days.
93. 1,1,2-Trichloroethane	G,T	a,o [6]	14 days.
94. Trichloroethene	G,T	a,o [6]	14 days.
95. Trichlorofluoromethane	G,T	a,o [6]	14 days.
96. 2,4,6-Trichlorophenol	G,T	a,b [6]	7 days.[11]
97. Vinyl chloride	G,T	a,o [6]	14 days.
Table ID—Pesticides [9,10]			
1–70. Pesticides	G,T	a,q [16]	7 days.[11]
Table IE—Radiologic Tests			
1–5. Alpha, beta and radium	P,G	c	6 months.

Table II Notes

[1] Container abbreviations: P = Polyethylene, G = Glass and T = PTFE-lined cap or septum.

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

[3] Procedure abbreviations:

a: Cool 4°C
b: 0.008% $Na_2S_2O_3$ [6]
c: HNO_3 to pH<2
d: H_2SO_4 to pH<2
e: None required
f: 0.6 g ascorbic acid [6]
g: NaOH to pH>12
h: HCl to pH<2
i: H_3PO_4 to pH <2
j: Filter immediately

k: Fix on site and store in dark
l: Add zinc acetate
m: NaOH to pH>9
n: Store in dark
o: 0.025 g ascorbic acid [6]
p: Adjust pH to 4–5 [10]
q: Adjust pH to 5–9

[4] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[5] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term ''analyze immediately'' usually means within 15 minutes or less of sample collection.

[6] Should only be used in the presence of residual chlorine.

[7] Samples should be filtered immediately on-site before adding preservative for dissolved metals.

[8] Maximum holding time is 24 hours when sulfide is present. Optionally all samples may be tested with lead acetate paper before pH adjustments in order to determine if sulfide is present. If sulfide is present, it can be removed by the addition of cadmium nitrate powder until a negative spot test is obtained. The sample is filtered and then NaOH is added to pH 12.

[9] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[10] When samples are to be extracted and analyzed for multiple analytes, the most stringent preservation procedures and shortest maximum holding times should be observed for optimum safeguard of sample integrity. Samples extracted for a wide range of analytes may be preserved by cooling to 4°C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6–9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnotes 6,13, and 14.

[11] Samples must be extracted within seven days of collection. The extract must be analyzed within 40 days of extraction.

[12] Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[13] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0± 0.2 to prevent rearrangement to benzidine.

[14] Extracts may be stored up to 7 days before analysis if storage is conducted under an inert (oxidant-free) atmosphere.

[15] Adjust pH to 7–10 with NaOH within 24 hours of sampling.

[16] The pH adjustment may be performed upon receipt at the laboratory and may be omitted if the samples are extracted within 72 hours of collection. For the analysis of aldrin, add 0.008% $N_2S_2O_3$.

Appendices C and D—[Removed]

6. In Part 136, Appendices C and D are proposed to be removed.

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 173

Periodic Inspection and Testing of Cylinders; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM–220A, Notice No. 95–13]

RIN 2137–AC59

Periodic Inspection and Testing of Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the requirements contained in the Hazardous Materials Regulations pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for transportation of compressed gases in commerce. The proposed changes would clarify current inspection and retest requirements, incorporate certain regulatory interpretations and add new provisions. The intent of the changes is to enhance public safety by providing greater guidance to persons who perform periodic inspection and testing of cylinders.

DATES: Comments must be received by December 15, 1995.

ADDRESSES: Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW, Washington DC 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Theresa Gwynn or Hattie L. Mitchell, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, authorizes the Secretary of Transportation to regulate the manufacture and continuing qualification of packagings (1) used to transport hazardous materials in commerce, or (2) certified under Federal hazmat law for the transportation of hazardous materials in commerce, whether or not actually used for that purpose. The Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, contain requirements for periodic inspection and testing of cylinders subject to the Federal hazmat law, including the frequency and manner of inspection and testing, standards for cylinder rejection and condemnation, and cylinder marking and recordkeeping.

Federal authority to regulate the transportation of compressed gases originated in a 1921 amendment to the Transportation of Explosives Act, 35 Stat. 1135, § 233 (March 4, 1909). The amendment, at 41 Stat. 1445, § 233, authorized the Interstate Commerce Commission (ICC) to regulate the packing, marking, loading, handling and transportation of compressed gases by common carriers. Under this authority, in 1930 the ICC implemented regulations for periodic inspection and testing of cylinders; the regulations, as amended, were first published in the Federal Register on December 12, 1940 (5 FR 4908).

Ten years later, the regulations were codified into the Code of Federal Regulations (15 FR 8261; Dec. 2, 1950). In 1967, pursuant to the Department of Transportation Act, Pub. L. 89–670, 80 Stat. 931, regulatory jurisdiction over the packaging of dangerous articles for transportation was transferred from the ICC to the Department of Transportation; those sections governing cylinder inspection and testing were moved to their present location in 49 CFR 173.34 (32 FR 5606; April 5, 1967). The cited authority for the hazardous materials regulations is no longer the Transportation of Explosives Act but rather the Federal hazmat law. Federal hazmat jurisdiction extends beyond common carriers, to all transportation in commerce by highway, rail, air or water. Through rulemaking and the issuance of exemptions from the regulations under 49 CFR part 107, subpart B, aluminum and composite cylinders now are authorized for use in addition to steel. Nevertheless, apart from substitution of the ''DOT'' identifier for the ''ICC'' identifier, the present basic inspection and testing requirements, at § 173.34(e)(1)–(6) and related sections, largely are unchanged from the initial 1940 publication.

The regulations have been refined by interpretation in the process of enforcement and in response to public inquiries. Thus, certain periodic inspection and testing requirements, such as those pertaining to standards for visual inspection, calibration of the retest apparatus, retest performance and recordkeeping, are not explicit in the HMR. RSPA has worked closely with the cylinder manufacturing and maintenance industries in developing interpretations consistent with sound industry practice and in communicating these interpretations to the regulated community. Nevertheless, RSPA inspections and inquiries have shown that the regulatory requirements are not sufficiently clear to some cylinder retesters. This raises concerns both about visual inspection and testing being conducted fully consistent with safe practices and, in enforcement, about fair notice of what the requirements are. Accordingly, RSPA proposes to revise the existing language to incorporate the RSPA interpretations and certain industry consensus standards and practices into the regulations.

Under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034, a regulatory evaluation comparing the public costs and benefits of alternative rulemaking actions must be prepared unless the rule has a minimal cost impact. Because the proposed changes would clarify the regulations as presently enforced, or incorporate new requirements that are consistent with industry practice, the cost impact of the rule is expected to be minimal. Therefore, RSPA has prepared no regulatory evaluation. RSPA invites comments on potential cost impacts it may not have considered. If comments indicate that costs of the rule would not be minimal, RSPA will prepare a regulatory evaluation.

II. Proposal

Section 173.34

Revision of § 173.34(e) Heading. The proposed rule would revise the heading of paragraph (e) from ''Periodic retesting, reinspection and marking of cylinders'' to ''Periodic qualification and marking of cylinders.'' RSPA believes this heading more clearly indicates the subject matter of the paragraph, and avoids redundancy. Further, it has been argued in at least one enforcement case involving the charging of foreign cylinders for export under § 173.301(j) that paragraph (j)(1), requiring ''retesting'' in compliance with § 173.34(e), is unenforceable when there is no evidence that the foreign cylinder previously has been ''tested.''

Revising the heading of paragraph (e) and amending § 173.301(j)(1) as proposed in this notice would eliminate misunderstandings of the testing requirement. This revision is for clarification, and would not change the scope of § 173.34(e).

Revision of Retest Table. Currently, requirements applicable to foreign cylinders are contained in two separate table entries. Under the proposed rule, the table entry prescribing the minimum retest pressure and a five-year retest period for ''[a]ny cylinder with marked test pressure'' would be removed and the entry for ''[f]oreign cylinder charged for export'' would be revised to specify a retest period of five-years. Comment is invited as to whether table entries are needed to specify retest pressure or frequency for any specification, exemption or special permit cylinder authorized for the transportation of hazardous material in commerce.

General Requirements and Retester Authorization. Current paragraph (e) of § 173.34 would be substantially revised. Proposed paragraph (e)(1) would set forth the general requirement that each DOT specification or exemption cylinder must be periodically inspected, tested and marked in accordance with § 173.34 by or under the supervision of a RSPA-authorized retester. It would prohibit use of a DOT specification or exemption cylinder that is required to be periodically inspected or tested for transportation of a hazardous material in commerce unless the cylinder is marked with an inspection or test date indicating that it is qualified for use. The procedure to obtain retester authorization, in the form of the retester identification number (RIN), and to renew the authorization would be specified in paragraph (e)(2).

Proposed paragraph (e)(2) would contain three new requirements. First, a retester's authority to mark a cylinder with a RIN and an inspection or test date would be contingent on the retester operating in compliance with the terms of the RIN issuance letter. Second, a retester would be required to inform RSPA in writing of any change in cylinder qualification personnel or testing equipment within 20 days. Presently, RSPA imposes these two requirements under the terms of the RIN issuance letter. Third, a retester would be required to maintain, at the facility, the relevant parts of 49 CFR, the current exemptions for all exemption cylinders inspected, retested or marked, and all Compressed Gas Association (CGA) pamphlets incorporated by reference in § 171.7 that apply to the retester's activities. It is RSPA's experience that retest facilities operating in accordance with sound business practice maintain current copies of these materials.

As a hazmat employer, a retester is responsible for properly training any employee who performs cylinder requalification functions. This also applies to an employee of an independent inspection agency. Independent inspection agencies are not RSPA agents or representatives. Nothing in the regulations relieves either party from its obligation for ensuring compliance with the HMR.

Visual Inspection. Current paragraph (e) requires visual internal and external inspection in accordance with CGA Pamphlet C–6, ''Standards for Visual Inspection of Compressed Gas Cylinders,'' which contains inspection standards for steel cylinders. This provision was enacted before DOT's approval of aluminum and composite cylinders for transportation of compressed gases and before CGA publication of inspection standards for aluminum and composite cylinders. RSPA proposes, in new paragraph (e)(3), to require inspection of aluminum and composite cylinders in accordance with CGA Pamphlet C–6.1 (''Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders'' (1995)), CGA Pamphlet C–6.3 (''Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders'' (1991)), and CGA Pamphlet C–6.2 (''Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders'' (1988)). These documents would be incorporated by reference in § 171.7. Proposed paragraph (e)(3) explicitly would require a retester to comply with cylinder approval, rejection and condemnation criteria set forth in CGA Pamphlet C–6, C–6.1, C–6.2 or C–6.3, as applicable. No new inspection requirements would be imposed.

Retesting. Proposed paragraph (e)(4) would prescribe procedures for cylinder volumetric pressure retesting, confirming system calibration, and standards for the accuracy and resolution of pressure/expansion test systems. The existing requirements would be clarified and several new provisions would be added.

Proposed paragraph (e)(4)(i) would establish that retest, unless otherwise provided in § 173.34(e), means testing by a method that measures a cylinder's total and permanent expansions at prescribed test pressure. While it is expected that nearly all retesting will be by internal pressurization of a cylinder suspended in a water jacket (i.e., hydrostatic retesting), a retester would be permitted to use other methods meeting resolution and accuracy standards.

A strict reading of current paragraph (e)(3) can lead to misinterpretations of two key concepts: device accuracy (i.e., how truthfully the system displays, or records, the actual pressure or expansion being measured); and device resolution (i.e., the smallest incremental unit that a measuring instrument or system must be capable of being read to, or recorded from, so as to meet or exceed the measurement accuracy requirement). Pressure and expansion indicating devices are compared against a calibrated standard daily to check their accuracy. However, if the scale of the indicating device does not show the proper resolution, the accuracy of the reading is not assured. Currently, (e)(3) addresses expansion gauge accuracy, but not resolution, and pressure gauge resolution, but not accuracy. Proposed paragraph (e)(4)(ii) would set clear resolution standards for both pressure and expansion indicating devices, while paragraph (e)(4)(iii) would set clear accuracy standards for both.

First, proposed paragraph (e)(4)(ii) would require the pressure indicating device to have sufficient resolution to indicate the pressure to within 1% of the minimum prescribed test pressure of any cylinder retested (see example below). Second, the device for measuring cylinder expansion must have sufficient resolution to indicate expansion to within 1% of the total expansion of any cylinder retested. An exception would be retained for cylinders of less than 10 cubic centimeters total expansion, for which resolution to 0.1 cubic centimeter would be permitted. Finally, the paragraph would codify industry practice of midpoint interpolation to achieve the required degree of resolution.

For instance (in a system using pressure gauges), if a pressure gauge reads only in increments of 50 psi, and the minimum prescribed test pressure for a cylinder to be tested is 1000 psi, the gauge would show insufficient resolution to determine accuracy. A gauge of finer scale is needed. To achieve the required resolution, the gauge divisions should permit reading of pressures to within 1% of the cylinder's minimum prescribed test pressure (1% of 1000 psi = 10 psi). Since mid-point interpolation is permissible, a gauge of no greater than 20 psi increments can be used for this example (half of 20psi is 10psi, the required resolution).

Presently, paragraph (e)(3) specifies no calibration frequency to establish retest apparatus pressure and cylinder expansion accurately to plus or minus

one percent of true pressure and expansion values. CGA Pamphlet C–1 recommends that calibration be confirmed each day before retesting. RSPA's experience is that most retesters confirm calibration daily as a matter of sound operating practice. Proposed paragraph (e)(4)(iii), consistent with industry practice, would require daily confirmation of calibration before retesting to assure both expansion and pressure gauge accuracy. Comments are solicited on whether calibration is required more or less frequently, and whether, for example, it is appropriate to require a calibration check at the beginning of each shift (for those facilities operating more than one shift per day), for each change in retest operator, or at some other frequency.

A strict reading of current paragraph (e)(4) requires that system calibration has been demonstrated at each pressure at which a cylinder is retested. The retester's ability to control test pressure, however, is limited by pump characteristics, system idiosyncrasies, and residual cylinder expansion. Further, a calibrated cylinder may not be certified at each pressure at which a retester wishes to perform a hydrostatic test. For these reasons, RSPA is proposing, in paragraph (e)(4)(iii), to allow two means of demonstrating calibration. First, as at present, a retester may show calibration at test pressure. Alternatively, a retester, on a given day, simply may perform calibrated cylinder runs at pressures above and below test pressures for that day. A retester is not authorized to perform a hydrostatic test at a pressure above the highest pressure or below the lowest pressure at which the calibrated cylinder has demonstrated calibration on that day.

The calibration certificate for a calibrated cylinder establishes true total expansions at a range of pressures, generally at each 1000 pounds per square inch (psi). During system calibration, the operator must compare the system pressure or the total expansion reading with the actual reading on the calibration certificate for that pressure or total expansion. Proposed paragraph (e)(4)(iv) would require retesters to maintain calibrated cylinder certificates, as is current industry practice.

Proposed new paragraph (e)(4)(v) would restate existing requirements for cylinder retesting, including the requirement to hold minimum test pressure for at least 30 seconds and as long as necessary for full cylinder expansion and the prohibition on pressurizing a cylinder above 90 percent of test pressure before a retest. As under current regulations, when the system apparatus fails to hold pressure after test pressure has been reached, retest is authorized at a pressure increased by 10 percent or 100 psi, whichever is less. Language would be added to emphasize that a second retest is authorized only if the apparatus has failed to hold test pressure, and not if a cylinder has exhibited excessive expansion. RSPA also is considering: (1) Specifying the period of time a retester must wait before retest, after applying more than 90 percent of test pressure; (2) limiting the number of permissible retests after apparatus failure; and (3) specifying a standard for condemnation in the event of overpressurization. Comments are specifically invited on these issues.

Cylinder Rejection/Condemnation. Proposed paragraphs (e)(5) and (e)(6) would contain requirements for rejection and condemnation of cylinders.

A ''rejected cylinder'' is one that is determined by visual examination to be not in proper condition to be presented or used as a specification packaging for the transportation of hazardous material, but that is authorized to be repaired or rebuilt. The current regulations incorporate rejection and repair standards of CGA Pamphlet C–6 through paragraph (e)(1), which requires inspection in accordance with that pamphlet. The proposed rule would create a separate paragraph defining ''rejection'' and explicitly incorporating the rejection criteria of CGA Pamphlets C–6, C–6.1, C–6.2, and C–6.3 for steel, aluminum and composite cylinders, as applicable. A provision, contained in current paragraph (e)(4), stating that a cylinder condemned for excessive permanent expansion on retest may be requalified by reheat treatment would be removed. Requalifying cylinders by reheat treatment is often not practical or consistent with common industry practice.

A condemned cylinder is one that may not be presented or used as a specification packaging for transportation of hazardous materials, and for which requalification is not authorized. Under the current regulations, a cylinder must be condemned if: (1) It meets a CGA Pamphlet C–6 criterion for condemnation on visual inspection; (2) it exceeds permissible permanent expansion on retest and is not authorized for reheat treatment; (3) it leaks or evidences damage indicating that it is likely to be weakened appreciably and is not authorized for repair or rebuilding; (4) for an exemption cylinder, it meets another condemnation criterion specified in the exemption; or (5) for a DOT 3HT cylinder governed by paragraph (e)(13), elastic expansion exceeds the marked rejection elastic expansion.

For both rejected and condemned cylinders, proposed paragraphs (e)(5)(ii) and (e)(6)(ii) would require the retester to notify the cylinder owner in writing of the cylinder's status, prescribed remedial actions that can be taken (in the case of a rejected cylinder), and that the cylinder may not be used as a specification packaging for the movement of hazardous materials. Requiring written notification would offer greater assurance that cylinder owners are made aware of potentially unsafe cylinders.

The proposed rule would not change the present condemnation standards, except for explicitly adding evidence of cracking as a basis to condemn a cylinder. To add assurance that a condemned cylinder will not be returned to service, the retester would stamp a series of X's over the DOT specification number and service pressure or the word ''CONDEMNED'' on the shoulder, top head, or neck of the cylinder using a steel stamp. The retester would not be required to stamp the cylinder if, on the direction of the owner, the retester rendered the cylinder incapable of holding pressure in some fashion (e.g., by damaging the cylinder threads or drilling through the cylinder wall).

Comments are particularly invited on the proposed requirements to stamp condemned cylinders. RSPA wishes to gain additional information on present retester practices of handling rejected and condemned cylinders, the costs and benefits of the requirements, the need for the requirements, their effect on retester operating practices, and alternatives to ensure that rejected and condemned cylinders are removed from hazardous material service where use of a specification packaging is required.

Recordkeeping. Current paragraph (e)(5) states that ''[r]ecords showing the result of reinspection and retest must be kept.'' RSPA has applied this regulation to require that the retester, for each cylinder inspected or tested, record the information necessary to confirm that the retest was conducted under the required conditions (i.e., at correct test pressure), indicate the results of inspection and retest, and enable the results to be traced to the cylinder inspected or tested. Specifically, the records must identify the cylinder, date, results of visual examination, test pressure, test results (including expansion data) and cylinder disposition. To identify the cylinder, RSPA has required, consistent with CGA Pamphlet C–1, that retesters record

the cylinder specification or exemption number, the service pressure, the serial number and the cylinder owner. To RSPA's knowledge, most retesters use retest sheets containing these entries and record this information as standard operating practice. Nevertheless, prescribing explicitly the information required to be in test records should benefit retesters and improve recordkeeping practices.

RSPA proposes to require the retest record to contain those entries presently required, as well as the cylinder manufacturer's name or symbol, cylinder dimensions and identification of the retest operator. For cylinders qualified for overfill by a plus (+) marking, the retest record must indicate the method by which wall stress computations pursuant to § 173.302(c) were made. This notation may be entered in the ''Remarks'' column of the retest sheet. The rule explicitly would require recordation of tests not completed due to failure of the apparatus to hold test pressure. The record for a subsequent test would be required to include the date of the earlier test. This information also could be entered in the ''Remarks'' column on the retest sheet.

CGA Pamphlet C–1 recommends that retesters record calibrated cylinder expansions used to confirm retest apparatus calibration. In RSPA's experience, most retesters record these expansions, even though not required by the current regulations. If calibration checks are not recorded, a retester, particularly if it employs more than one retest operator during a shift or an operating day, has no means of ensuring apparatus calibration before testing or confirming that the apparatus was accurate on any given day. The proposed rule would require that calibration runs be recorded, in chronological order, with retest records for that day.

A retester who marks a cylinder for overfill under the conditions of § 173.302(c) would be required to retain records of wall stress computations. Wall stress may be determined through a method that does not require computation, such as the use of an elastic expansion limit provided by the cylinder manufacturer. This provision would not limit the retester in its choice of method, but simply require that the method be noted and computations, if required by the method used, be retained.

Finally, proposed paragraph (e)(8) would require each retester to maintain at its facility its RIN issuance letter from RSPA; a copy of the renewal application, if renewal is pending; copies of notifications to RSPA since issuance of the most recent RIN letter of changes in equipment or personnel; and most recent certificates of calibration for all calibrated cylinders. Currently, the RIN issuance letter contains a requirement that the letter be posted at the retest facility. RSPA believes that maintenance of the other documents is standard retester operating practice and that, in any event, the cost of doing so is insignificant. RSPA invites comments on these conclusions.

Section 173.301

Foreign Cylinders for Export. Under the present regulations, a foreign cylinder not manufactured, inspected, tested and marked in accordance with part 178 may be filled in the United States only for export. Further, the cylinder may be filled for export only if it is marked as having been, and has been, inspected and retested in compliance with § 173.34(e), and it meets maximum filling density and service pressure requirements. This marking would not contain the RIN, only the month and year of the test. Section 173.301(j) would be revised in minor respects to clarify these requirements.

Section 173.302

Computing Wall Stress for Overfill Authorization. Currently, § 173.302(c) permits filling of DOT 3A, 3AX, 3AA, 3AAX and 3T cylinders to 110 percent of marked service pressure under prescribed conditions. One condition for overfill, at paragraph (c)(3), is that neither the average nor the maximum wall stress in the cylinder, at test pressure, exceeds the applicable value stated in that paragraph. The proposed rule would amend paragraph (c)(3) in three respects. First, it would clarify the existing requirement that neither average nor maximum wall stress may exceed the specified value. Second, it would amend Note 1 to paragraph (c)(3) to explicitly authorize the existing industry practice of using the experimental K factor obtained from CGA Pamphlet C–5 to compute average wall stress. Third, it would add a Note 3 to explicitly authorize the industry practice of ensuring compliance with the wall stress limitations of paragraph (c)(3) by computing an elastic expansion rejection limit and comparing elastic expansion derived during retest. Comments are invited on whether other methods that may not presently be authorized by paragraph (c)(3) may be used to compute accurately the average or maximum wall stress.

Section 173.309

Retest requirements for fire extinguishers. Paragraph (b) provides for DOT specification cylinders used as fire extinguishers. Cylinders containing certain fire extinguishing agents such as ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluoromethane, which are commercially free from corroding components and meeting certain conditions, are authorized to meet a longer retest interval in accordance with current § 173.34(e)(18). The Fire Equipment Manufacturers' Association, Inc. (FEMAI) petitioned (P–1216) RSPA to move the conditions for extending the retest interval from § 173.309 to § 173.34(e)(18). FEMAI stated that this change would clarify that carbon dioxide fire extinguishers do not qualify for the special retest provisions in § 173.34(e)(18). RSPA agrees with FEMAI that these changes should be made. In this proposed rule, the retest criteria for these cylinders are revised and moved to proposed § 173.34(e)(21).

Revised § 173.309(b) would prescribe specification cylinders authorized for transportation under the proper shipping name ''fire extinguishers.'' In a different petition (P–1217), FEMAI stated that DOT 3E cylinders are used as fire extinguishers and requested that this specification be added. RSPA agrees and proposes to include the DOT 3E specification in § 173.309(b). Also in this paragraph, RSPA proposes to remove a limitation on the dew point for the expellant gas, which is not a requirement under § 173.309(a) for gases in non-specification cylinders used as fire extinguishers.

Parts 171 and 173

Miscellaneous Technical Revisions. The proposed rule would amend several other regulations for update and for purposes of clarity only. In § 171.7, several CGA standards incorporated by reference would be updated: CGA Pamphlet C–6, ''Standards for Visual Inspection of Steel Compressed Gas Cylinders'' would be updated from the 1984 to the 1993 edition; CGA Pamphlet C–12, ''Qualification Procedure for Acetylene Cylinder Design'' would be updated from the 1979 to the 1994 edition; CGA Pamphlet C–13, ''Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders'' would be updated from the 1985 to the 1992 edition (responds to P–1241); and CGA Pamphlet S–1.1.1, Pressure Relief Device Standards—Part 1—Cylinders for

Compressed Gases,'' would be updated from the 1989 to the 1994 edition (responds to P–1247). With regard to the 1994 edition of CGA Pamphlet S–1.1.1, new paragraph 9.1.1.1 of the pamphlet, which specifies the replacement or requalification of pressure relief valves, on affected DOT cylinders every 10 years, would not be made mandatory. The National Propane Gas Association submitted comments on petition P–1247 stating that the propane industry has experienced no problems with these pressure relief valves on cylinders and that adoption of the provision is unwarranted. Although replacement of pressure relief valves on a periodic basis would not be required under § 173.34(d) of this proposed rulemaking, RSPA encourages this practice by industry.

In § 173.23, paragraphs (c), (d) and (e) would be revised to clarify that the requirement to remark as ''3AL'' certain aluminum cylinders manufactured under exemption before the existence of the DOT 3AL specification applies to cylinders manufactured under both the listed exemptions and the ''special permits'' that preceded those exemptions.

In § 173.34, paragraphs (e) (2), (8), (10), (13) and (15) would be revised for clarity only. A number of other revisions would be made throughout paragraph (e) for minor editorial clarification, to correct cross-references within the section as amended, and to include references to the newly incorporated CGA Pamphlets C–5, C–6, C–6.1, C–6.2 and C–6.3. Subparagraph numbering within paragraph (e) would change generally as a result of the restructuring of the paragraph under this rule.

Future rulemaking action. RSPA plans to clarify certain other requirements applicable to cylinders in a separate rulemaking action in the near future. In that notice, RSPA will propose the revision and reorganization of the cylinder specifications in Part 178. In addition, all requirements applicable to the inspection, retest, repair and continuing requalification of cylinders would be relocated from § 173.34 to subpart C of part 180.

III. Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this proposed rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

2. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not ''substantively the same'' as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This notice of proposed rulemaking addresses the maintenance and testing of a package represented as qualified for use in the transportation of hazardous material. Therefore, the rule would preempt State, local and Indian tribe requirements that are not ''substantively the same'' as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier that the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be 90 days after publication in the Federal Register. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule applies to persons who inspect, retest and certify cylinders used to transport hazardous materials. These persons include a number of small businesses; however, the economic impact on any small business affected by the rule is expected to be minimal. There are no direct or indirect adverse economic impacts for small units of government or other organizations.

4. Paperwork Reduction Act

Information collection and recordkeeping requirements in current § 173.34 pertaining to cylinder retesters have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0022. Because this proposed rule requires no substantive change from the current burden hours required, RSPA has not resubmitted the proposed information collection requirements to OMB for approval under the Paperwork Reduction Act. RSPA invites comments on any incremental paperwork burdens that it may not have considered. If deemed necessary, the burden hours will be revised to reflect the new requirements of this proposed rule and the information collection will be submitted to OMB for approval under the Paperwork Reduction Act.

5. Regulation Identifier Number

A regulation identifier number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The regulation identifier number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the Table in paragraph (a)(3), under the entry *Compressed Gas Association, Inc.,* the entries for CGA Pamphlets C–6, C–12, C–13, and S–1.1 would be revised and four new entries would be added in numerical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
Compressed Gas Association, Inc.,	
* * * * * * *	
CGA Pamphlet C–5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991	173.302
CGA Pamphlet C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993	173.34
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995	173.34
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1988	173.34
CGA Pamphlet C–6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991	173.34
* * * * * * *	
CGA Pamphlet C–12, Qualification Procedure for Acetylene Cylinder Design, 1994	173.303
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 1992	173.34
* * * * * * *	
CGA Pamphlet S–1.1., Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 1994	173.34
* * * * * * *	

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 173.23, paragraphs (c), (d), and (e) would be revised to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(c) After July 2, 1982, a seamless aluminum cylinder manufactured in conformance with and for use under DOT special permit (SP) or exemption (E) 6498, 7042, 8107, 8364 or 8422 may be continued in use if marked before or at the time of the next retest with either the specification identification ''3AL'' immediately above the special permit or exemption number, or the DOT mark (e.g., DOT 3AL 1800) added in proximity to the special permit or exemption marking.

(d) Cylinders (spheres) manufactured and marked under DOT special permit (SP) or exemption (E) 6616 prior to January 1, 1983, may be continued in use if marked before or at the time of the next retest with the specification identification ''4BA'' near the special permit or exemption marking.

(e) After October 1, 1984, cylinders manufactured for use under special permit (SP) or exemption (E) 6668 or 8404 may be continued in use, and must be marked ''DOT–4LXXXYY'' (XXX to be replaced by the service pressure, YY to be replaced by the letters ''AL'', if applicable) in compliance with Specification 4L (§ 178.57 of this subchapter) on or before January 1, 1986. The ''DOT–4LXXXYY'' must appear in proximity to other required special permit or exemption markings.

* * * * *

5. In § 173.34, a parenthetical would be added immediately following the first sentence of the introductory text of paragraph (d), the first sentence of paragraph (d) would be republished, and paragraph (e) would be revised to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(d) *Pressure relief device systems.* No person may offer a cylinder charged with a compressed gas for transportation unless the cylinder is equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S–1.1. (Compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1 is permissive).* * *

* * * * *

(e) *Periodic qualification and marking of cylinders.* Each cylinder that becomes due for periodic retest as specified in the following table must be retested and marked in conformance with the requirements of this paragraph:

RETEST AND INSPECTION OF CYLINDERS

Specification under which cylinder was made	Minimum retest pressure (p.s.i.)	Retest period (years)
DOT–3	3,000 p.s.i.	5.
DOT–3A, 3AA	5/3 times service pressure, except noncorrosive service (see § 173.34(e)(10)).	5 or 10 (see § 173.34(e)(11), (e)(14), (e)(15) and (e)(18)).
DOT–3AL	5/3 times service pressure	5.
DOT–3AX, 3AAX	5/3 times service pressure	5.
3B, 3BN	2 times service pressure (see § 173.34(e)(10))	5 or 10 (see § 173.34(e)(14)).
3C	Retest not required	
3D	5/3 times service pressure	5.
3E	Retest not required	
3HT	5/3 times service pressure	3 (see § 173.34(e)(13)).

RETEST AND INSPECTION OF CYLINDERS—Continued

Specification under which cylinder was made	Minimum retest pressure (p.s.i.)	Retest period (years)
3T	5/3 times service pressure	5.
4	700 p.s.i.	10.
4A	5/3 times service pressure (see § 173.34(e)(10)).	5 or 10 (see § 173.34(e)(14)).
4AA480	2 times service pressure (see § 173.34(e)(10))	5 or 10 (see § 173.34(e)(11)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (see § 173.34(e)(10)).	5 or 10 (see § 173.34(e)(9), (e)(14) and (e)(18)).
4C	Retest not required	
4D, 4DA, 4DS	2 times service pressure	5.
DOT–4E	2 times service pressure, except non-corrosive service (see § 173.34(e)(10)).	5.
4L	Retest not required	
8, 8AL		10 or 20 (See § 173.34(e)(17)).
DOT–9	400 p.s.i. (maximum 600 p.s.i.)	5.
25	500 p.s.i.	5.
26 for filling at over 450 p.s.i.	5/3 times service pressure	5.
26 for filling at 450 p.s.i. and below	2 times service pressure, except non-corrosive service (see § 173.34(e)(10)).	5 or 10 (see § 173.34(e)(9)).
33	800 p.s.i.	5.
38	500 p.s.i.	5.
Foreign cylinder (see § 173.301(j) for restrictions on use).	As marked on the cylinder, but not less than 5/3 of any service or working pressure marking.	5.

NOTE 1: For cylinders not marked with a service pressure, see § 173.301(e)(1).

(1) *General requirements.* (i) Each cylinder bearing a DOT specification marking (including a cylinder remarked in conformance with § 173.23) must be inspected, retested and marked in conformance with this section, at the frequency specified in the Retest and Inspection of Cylinders Table in this paragraph (e). Each cylinder bearing a DOT exemption number must be inspected, retested and marked in conformance with this section and the terms of the applicable exemption, at the frequency specified in the exemption.

(ii) No cylinder required by paragraph (e)(1)(i) of this section to be retested may be used for the transportation of a hazardous material in commerce unless that cylinder has been inspected and retested in accordance with this section and the retester has marked the cylinder by stamping the date of retest, the cylinder retester identification number (RIN) unless excepted under this section, and any other marking required by this section. No person may mark a test date or RIN on a DOT specification or exemption cylinder unless all applicable requirements of this section have been met.

(2) *Retester authorization.* (i) No person may mark a cylinder with a test date or RIN, or otherwise represent that a DOT specification or exemption cylinder has been retested under this section, unless that person holds a current RIN issued by RSPA and operates in compliance with the terms of the RIN issuance letter. All functions under this section shall be performed or supervised by an individual named as qualified in the RIN application or a notification pursuant to paragraph (e)(2)(iv) of this section.

(ii) Any person seeking approval as a cylinder retester shall apply to an independent inspection agency, approved by RSPA pursuant to § 173.300a, for inspection of its retest facility. The applicant shall bear the cost of the inspection. Independent inspection agencies are not RSPA agents or representatives. A list of approved independent inspection agencies is available from the Associate Administrator for Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals (DHM–32), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

(A) After the inspection, the person seeking approval must submit a letter of recommendation and inspection report from the independent inspection agency and a completed approval application to the Associate Administrator.

(B) The Associate Administrator reviews the application, the inspection report and recommendation submitted by the independent inspection agency, and other available information. The Associate Administrator issues a RIN if it finds that the applicant's facility and qualifications are adequate to properly inspect, test and mark cylinders under this section. Unless otherwise provided in the RIN issuance letter, a RIN expires five years from the date of issuance.

(iii) The retester shall apply for RIN renewal in a timely manner. An inspection report and a recommendation of an independent inspection agency are required for renewal. If the Associate Administrator receives a renewal application at least 50 days before expiration of the RIN, the RIN will remain in effect until the Associate Administrator issues the renewal or notifies the retester that the RIN will not be reissued. The Associate Administrator renews a RIN in accordance with the standard in paragraph (e)(2)(ii)(B) of this section.

(iv) A current RIN remains valid provided the retester's facility and qualifications are maintained at or above the level observed at the time of inspection by the independent inspection agency. The RIN holder shall report in writing any change in name, address, ownership or management of the holder; personnel performing any function under this section; or testing equipment to the Associate Administrator for Hazardous Materials Safety (DHM–32) within 20 days of the change.

(v) A retester shall maintain, at each location at which it inspects, retests or marks cylinders under this section, current copies of:

(A) Those portions of Parts 171–180 of this subchapter that apply to its cylinder inspection, retesting and marking activities at that location.

(B) All exemptions governing exemption cylinders inspected, retested or marked by the retester at that location.

(C) Each CGA publication incorporated by reference in § 171.7 of this subchapter that applies to the retester's cylinder inspection, retesting and marking activities at that location. The publication maintained shall be the edition incorporated by reference in § 171.7 of this subchapter.

(3) *Visual inspection.* Except as otherwise provided in this section, a cylinder must be visually inspected, internally and externally, in accordance with the terms of CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable. The cylinder must be approved, rejected or condemned according to the criteria set forth in the applicable CGA pamphlet. Internal inspection may be omitted for cylinders of the type and in the service described under paragraphs (e) (12) and (13) of this section. DOT 3BN cylinders must be inspected in accordance with CGA Pamphlet C–6.

(4) *Pressure retest.* (i) Each cylinder required to be retested under this section, unless otherwise provided, must be retested by means suitable for measuring the expansion of the cylinder under pressure. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(ii) The pressure indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of each cylinder tested, except that for analog devices, interpolation to ½ of the marked gauge divisions is acceptable. The expansion indicating device of the testing apparatus must also permit incremental reading of the cylinder expansion to 1% of the total expansion of each cylinder tested or 0.1 cubic centimeter, whichever is larger. Midpoint visual interpolation is permitted.

(iii) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator for Hazardous Materials Safety (DHM–32), that:

(A) The pressure indicating device, as part of the retest apparatus, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day. The pressure indicating device, itself, must be certified as having an accuracy of ±0.5%, or better, of its full range, and must permit readings of pressure from 90%–120% of the minimum prescribed test pressure of the cylinder to be tested. The accuracy of the pressure indicating device within the test system can be demonstrated at any point within 500 psi of the actual test pressure for test pressures at or above 3000 psi, or 10% of the actual test pressure for test pressures below 3000 psi; and

(B) The expansion indicating device, as part of the retest apparatus, gives a stable reading of expansion and is accurate to ±1.0% of the total expansion of any cylinder tested or 0.1 cubic centimeter, whichever is larger. The expansion indicating device, itself, must have an accuracy of ±0.5%, or better, of its full scale.

(iv) The test equipment used must be calibrated to within ±1.0% of the calibrated cylinder's pressure and corresponding expansion values. This can be accomplished by bringing the pressure to a value shown on the calibration certificate for the calibrated cylinder used and verifying that the resulting total expansion is within ±1.0% of the total expansion shown on the calibration certificate. Alternatively, calibration may be demonstrated by bringing the total expansion to a known value on the calibration certificate for the calibrated cylinder used and verifying that the resulting pressure is within ±1.0% of the pressure shown on the calibration certificate. The calibrated cylinder must show no permanent expansion. The retester shall be able to demonstrate calibration in conformance with this paragraph (e)(4) to an authorized RSPA inspector on any day that it retests cylinders. A retester shall maintain calibrated cylinder certificates in conformance with paragraph (e)(8)(iii) of this section.

(v) Minimum test pressure must be maintained for at least 30 seconds, and as long as necessary for complete expansion of the cylinder. A system check may be performed at or below 90% of test pressure prior to the retest. In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is less. This paragraph (e)(4) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (e)(6) of this section.

(5) *Cylinder rejection.* (i) A retester shall reject a cylinder when on visual inspection, it meets a rejection standard set forth in CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable.

(ii) A cylinder that is rejected may not be marked as meeting the requirements of this section. The retester shall notify the cylinder owner, in writing, that the cylinder, unless requalified, reinspected and retested in conformance with CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable, Part 173 of this subchapter, and any applicable exemption, is rejected and may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required.

(6) *Cylinder condemnation.* (i) A cylinder must be condemned when:

(A) On inspection, it meets a condition for condemnation set forth in CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable;

(B) The cylinder leaks through its wall;

(C) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably;

(D) For a DOT specification cylinder other than a DOT 4E aluminum cylinder, permanent expansion exceeds 10 percent of total expansion;

(E) For a DOT 4E aluminum cylinder, permanent expansion exceeds 12 percent of total expansion;

(F) For a DOT exemption cylinder, permanent expansion exceeds the limit set forth in the applicable exemption, or the cylinder meets another criterion for condemnation in the applicable exemption; or

(G) For a DOT specification 3HT cylinder, elastic expansion exceeds the marked rejection elastic expansion.

(ii) A cylinder that is condemned may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required and may not be marked as meeting the requirements of this section or any DOT exemption. When a cylinder is required to be condemned, the retester must stamp a series of X's over the DOT specification number and marked service pressure, must stamp ''CONDEMNED'' on the shoulder, top head, or neck using a steel stamp and must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required. Alternatively, at the direction of the owner, the retester may render the cylinder incapable of holding pressure. No person may remove or obliterate the ''CONDEMNED'' marking.

(7) *Retester markings.* (i) Each cylinder passing retest must be marked with the retester's RIN set in a square pattern, between the month and year of the retest date, in characters not less than 1/8-inch high. The first character of the RIN must occupy the upper left corner of the square pattern; the second in the upper right; the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May 1984, and approved by a retester who has been issued identification number A123, would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder

specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (c) of this section:

A 1
5 84
3 2

(ii) Markings of previous tests may not be obliterated. Cylinders that are subject to the requirements of paragraphs (e)(11), (12) (modified hydrostatic test only), (13) or (14) of this section, or the requirements of § 173.301(j) are not required to be marked with a RIN. Variation from the marking requirement may be approved on written request to the Associate Administrator for Hazardous Materials Safety (DHM–32).

(8) *Recordkeeping.* A retester shall maintain the following records at the retesting location, on paper or in a form from which a paper copy can be produced on request.

(i) Records of authority to inspect, retest and mark must be maintained, as follows:

(A) Current RIN issuance letter;

(B) If the RIN has expired and renewal is pending, a copy of the renewal application; and

(C) Copies of notifications to RSPA required under paragraph (e)(2)(iv) of this section.

(ii) Daily records of visual inspection and hydrostatic retest must be maintained in chronological order for five years. A single date may be used for each retest sheet, provided each retest on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries: date, dimensions, manufacturer, owner, and retest operator. Blank spaces may not be used to indicate repetition. Records must include:

(A) For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of retest operator. Calibrations must be recorded on the same sheets as, and in chronological order with, retest records for that date;

(B) For each cylinder retested or visually inspected, records containing the date; serial number; ICC/DOT specification or exemption number; service pressure; dimensions; manufacturer (name or symbol); owner; result of visual inspection; test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for retest, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302(c)(5), the retest sheet must indicate the method by which average and maximum wall stresses were computed. Records must be kept for all completed retests, as well as unsuccessful retests under paragraph (e)(4)(v) of this section. The entry for a later retest under paragraph (e)(4)(v) of this section after a failure to hold test pressure, or retest of a cylinder requalified after rejection, must indicate the date of the earlier inspection or retest; and

(C) Calculations of average and maximum wall stress pursuant to § 173.302(c)(3), if performed.

(iii) The most recent certificate of calibration must be maintained for each calibrated cylinder used by the retester.

(9) A cylinder in chlorine or sulfur dioxide service made before April 20, 1915, must be retested at 500 psi.

(10) A DOT 4-series cylinder that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably; or that has lost five percent or more of its official tare weight; must be retested before being recharged and shipped. (Refer to CGA Pamphlet C–6 or C–6.1, as applicable, regarding cylinder weakening). After retest, the actual tare weight must be recorded as the new tare weight.

(11) A cylinder of 12 pounds or less water capacity authorized for service pressure of 300 psi or less may be hydrostatically retested without a water jacket and without determining total and permanent expansions. The retest is successful if the cylinder, when examined under test pressure, does not display a defect described in paragraph (e)(6)(i)(B) or (C) of this section.

(12) A cylinder made in compliance with specification DOT 4B, DOT 4BA, DOT 4BW, DOT 4E or ICC–26–300 [1] (§§ 178.50, 178.51, 178.61, 178.68 of this subchapter) that is used exclusively for anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; liquefied petroleum gas; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and that is commercially free from corroding components and protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) may be retested every 10 years (see Note 2) instead of every five years. Alternatively, the cylinder may be subjected to internal hydrostatic pressure of at least two times the marked service pressure without determination of expansions (see Note 1), but this latter type of test must be repeated every five years after expiration of the first 10-year period (see Note 2). When subjected to the latter test, the cylinder must be carefully examined under test pressure and removed from service if a leak or other harmful defect exists.

Note 1: A cylinder requalified by the modified hydrostatic test method or external inspection must be marked after a retest or an inspection by stamping the date of retest or reinspection on the cylinder followed by the symbol ''E'' (external inspection) or ''S'' (modified hydrostatic test method) as appropriate.

Note 2: Until further order of the Department, the 10-year retest period may be extended to 12 years, and the five-year retest period may be extended to seven years after expiration of the first 12-year period.

(13) A cylinder made in conformance with a specification listed in the table in this paragraph (e)(13) and used exclusively in the service indicated may, instead of a periodic hydrostatic retest, be given a complete external visual inspection at the time periodic retest becomes due. External visual inspection in accordance with CGA Pamphlets C–6 or C–6.1, as applicable, in addition to the other requirements of this section, meets the requirement for visual inspection. When this inspection is used instead of hydrostatic retesting, subsequent inspections are required at five-year intervals after the first inspection. Inspections shall be made only by competent persons and the results recorded and maintained in accordance with paragraph (e)(8) of this section. Records shall include: Date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footring or protective ring or fire damage); disposition of cylinder (returned to service, to cylinder manufacturer for repairs or scrapped). A cylinder that passes inspection shall be marked with the date in accordance with paragraph (e)(7) of this section. An ''E'' after the date indicates requalification by the

[1] Use of existing cylinders authorized; new construction not authorized.

external inspection method.

Specification cylinders must be in exclusive service as follows:

Cylinders made in compliance with—	Used exclusively for—
DOT–4, DOT–3A, DOT–3AA, DOT–3A480X, DOT–4A, DOT–4AA480	Anhydrous ammonia of at least 99.95% purity.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, ICC–26–240,[1] ICC–26–300[1].	Butadiene, inhibited, which is commercially free from corroding components.
DOT–3A, DOT–3A480X, DOT–3AA, DOT–3B, DOT–4A, DOT–4AA480, DOT–4B, DOT–4BA, DOT–4BW.	Cyclopropane which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E	Fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–240,[1] ICC–26–300[1].	Liquefied hydrocarbon gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–240,[1] ICC–26–300[1].	Liquefied petroleum gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E	Methylacetylene-propadiene, stabilized, which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW	Anhydrous mono, di, trimethylamines which are commercially free from corroding components.
DOT–4B240, DOT–4BW240	Ethyleneimine, inhibited.

[1] Use of existing cylinders authorized; new construction not authorized.

(14) A cylinder made in compliance with specification DOT–3A, DOT–3A 480X, or DOT–4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion resistant coating (such as painting) may be retested every 10 years instead of every five years.

(15) A cylinder not exceeding two inches outside diameter and less than 2 feet in length is exempted from hydrostatic retest.

(16) In addition to the other requirements of this section, a cylinder marked DOT–3HT must be requalified in accordance with CGA Pamphlet C–8 and the following:

(i) At least once every three years, the cylinder must be subjected to a test by hydrostatic pressure in a water jacket to determine elastic expansion.

(ii) The cylinder must be condemned:

(A) If elastic expansion exceeds the marked rejection elastic expansion (REE). A cylinder made before January 17, 1978, and not marked with an REE in cubic centimeters near the marked original elastic expansion must be so marked before the next retest date. The REE for a cylinder is 1.05 times its original elastic expansion.

(B) If there is evidence of denting or bulging.

(C) Twenty-four years after the date of the original test or after 4,380 pressurizations, whichever occurs first. If a cylinder is recharged, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or his agent.

(iii) The retest date and RIN must be applied by low-stress steel stamp to a depth no greater than that of the marking at the time of manufacture. Stamping on the sidewall is not authorized.

(17) A cylinder made in conformance with specification DOT–3A, DOT–3AA, DOT–3B, DOT–4A, DOT–4BA or DOT–4BW (§§ 178.36, 178.37, 178.38, 178.49, 178.51, 178.61 of this chapter) having a service pressure of 300 psi or less that is used exclusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable, nonliquefied compressed gas mixtures, liquid; that is commercially free of corroding components, and that is protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided that a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C–6. The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(18) A cylinder made in conformance with specification DOT–3A or 3AA, that has a water capacity not exceeding 125 pounds and that is removed from any cluster, bank, group, rack, or vehicle each time it is filled, may be retested every 10 years instead of every five years, provided:

(i) The cylinder was manufactured after December 31, 1945;

(ii) The cylinder is used exclusively for air, argon, cyclopropane, ethylene, helium, hydrogen, krypton, neon, nitrogen, nitrous oxide, oxygen, sulfur hexafluoride, xenon, permitted mixtures of these gases (see § 173.301(a)) and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided that the gas has a dew point at or below minus 52 °F. at 1 atmosphere;

(iii) Before each refill, the cylinder passes the hammer test specified in CGA Pamphlet C–6;

(iv) If since the last required hydrostatic retest the cylinder has not been used exclusively as specified in paragraph (e)(18)(ii) of this section, it currently conforms to the requirements of paragraphs (e)(18) (i) and (iii) of this section and has been retested under, and meets the criteria prescribed by, § 173.302(c) (2), (3) and (4);

(v) Each cylinder is stamped with a five-point star at least one-fourth of an inch high immediately following the test date. If a cylinder marked with the star is used other than as specified in this paragraph (e)(18), the star following the most recent test date must be obliterated and the cylinder must be tested every five years;

(vi) The cylinder is dried immediately after hydrostatic testing to remove all traces of free water; and

(vii) The cylinder is not used for underwater breathing.

(19)(i) A cylinder that previously contained a Class 8 (corrosive) material may not be used to transport a compressed gas in commerce unless the following requirements are met:

(A) The cylinder is visually inspected, internally and externally, in accordance with CGA Pamphlet C–6;

(B) Regardless of the date of previous retest, the cylinder is subjected to and passes inspection and hydrostatic retest in accordance with this section; and

(C) The record prescribed in paragraph (e)(8) of this section includes: the month and year of inspection and test; the cylinder identification (including ICC or DOT specification number, registered symbol, serial number, date of manufacture and owner); the conditions checked (e.g., leakage, corrosion, gouges, dents, or digs in shell or heads, broken or damaged footrings, fire damage) and the disposition of the cylinder (returned to service, returned to the manufacturer for repairs, or scrapped).

(ii) A cylinder requalified for compressed gas service in accordance with this paragraph (e)(19) may have its next retest and inspection scheduled from the date of the inspection and retest prescribed in this paragraph (e). If decontamination cannot remove all significant residue or impregnation by the Class 8 material, the cylinder may not be used to transport compressed gas in commerce.

(20) *DOT 8 and 8AL cylinders.* (i) Each owner of a DOT 8 or 8AL cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C–13. Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991	Before January 1, 2001	10 yrs.	Before January 1, 2011	Not required.
On or after January 1, 1991	10 yrs.[1]	10 yrs.	3 to 20 yrs.[2]	Not required.

[1] Years from date of cylinder manufacture.
[2] For a cylinder manufactured on or after January 1, 1991, requalification of the porous filler must be performed no sooner than 3 years, and no later than 20 years, from the date of manufacture.

(ii) Unless requalified and marked in accordance with CGA Pamphlet C–13 before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a valid RIN. Each cylinder successfully passing a shell or filler requalification must be marked with the retester's RIN in accordance with paragraph (e)(7) of this section. In addition, the cylinder must be marked to identify the type of requalification performed in accordance with paragraph 4.8 of CGA Pamphlet C–13. For example, the letter ''S'' must be used for a shell requalification and the letter ''F'' for a porous filler requalification.

(iii) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(21) A DOT specification 4B, 4BA, 4B240ET or 4BW (§§ 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinder used as a fire extinguisher may be retested in accordance with requirements contained in this paragraph (e)(21), subject to the following conditions:

(i) The cylinder is used exclusively as a fire extinguisher and contains fire extinguishing agents such as ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluoromethane that are commercially free from corroding components. The extinguishing agents must be expelled by gases that are nonflammable, non-poisonous, and noncorrosive as defined under this subchapter.

(ii) As part of the periodic retest, the retester must perform an external and internal visual inspection in accordance with CGA Pamphlet C–6. The cylinder must be carefully examined while under test pressure. A cylinder that passes hydrostatic retest using a water jacket method must be marked in accordance with paragraph (e)(7) of this section or, if using the modified hydrostatic test method, with the month and year of retest followed by the letter ''S''. A retest must be performed 12 years after the original test date and subsequent retests must be as follows: At a seven-year interval if the modified hydrostatic test was last performed or at a 12-year interval if the water jacket method was last used.

* * * * *

6. In § 173.301, paragraph (j) would be revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.[1]

* * * * *

(j) *Charging of foreign cylinders for export.* (1) A cylinder manufactured outside the United States that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be charged with compressed gas in the United States, and shipped, only for export. It may be charged and shipped for export only if it meets the following requirements, in addition to other requirements of the subchapter:

(i) It has been inspected, tested and marked in conformance with the procedures and requirements of § 173.34(e); and

(ii) It meets the maximum filling density and service pressure requirements of this part.

[1] Requirements covering cylinders are also applicable to spherical pressure vessels.

(2) The bill of lading or other shipping paper must identify the cylinder and carry the following certification: ''This cylinder has [These cylinders have] been retested and refilled in accordance with DOT requirements for export.''

* * * * *

7. In § 173.302, in paragraph (c)(3), the text preceding the table and the value for ''K'' in Note 1 following the table would be revised, and Note 3 would be added, to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

* * * * *

(c) * * *

(3) That neither the average wall stress nor the maximum wall stress exceeds the wall stress limitation shown in the following table (see Notes 1, 2 and 3):

* * * * *

Note 1: * * *

K=factor x 10^{-7} , experimentally determined for the particular type of cylinder being tested, or derived in accordance with CGA Pamphlet C–5;

* * * * *

Note 3: Compliance with average wall stress limitation may be determined through computation of the elastic expansion rejection limit in accordance with CGA Pamphlet C–5.

* * * * *

8. In § 173.309, paragraph (b) would be revised to read as follows:

§ 173.309 Fire extinguishers.

* * * * *

(b) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders.

Issued in Washington, DC on October 11, 1995, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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Federal Register

Wednesday
October 18, 1995

Part V

The President

Proclamation 6841—National Character Counts Week, 1995

Proclamation 6842—National Forest Products Week, 1995

Federal Register
Vol. 60, No. 201
Wednesday, October 18, 1995

Presidential Documents

Title 3—

The President

Proclamation 6841 of October 14, 1995

National Character Counts Week, 1995

By the President of the United States of America

A Proclamation

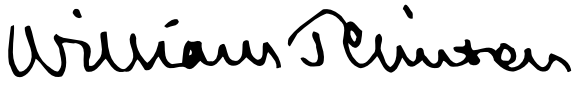
The children of today will be tomorrow's leaders, educators, caregivers, and parents. As we seek to prepare our Nation for the challenges of the future, we must reaffirm America's deepest beliefs and instill in our youth the principles of opportunity, responsibility, and community that have always united our citizens. Emphasizing both individual and social duties, character education helps us toward that goal and reminds us that our country's strength has long been drawn from fundamental ideas.

Families have always held the primary obligation for teaching values to their children. Schools, too, play a vital role in reinforcing the basic precepts of good citizenship—fairness and honesty, respect for oneself and for others, and personal accountability. My Administration's education agenda is dedicated to raising standards for academics and discipline so that young people will have the essential tools they need to succeed. Our Goals 2000: Educate America Act embraces the importance of parental involvement in the learning process, recognizing that family participation encourages children to value scholarship and to adopt strong values. Character education programs can increase school performance as well, and the Improving America's Schools Act promotes such initiatives.

As Americans, we are called upon to fulfill the obligations of citizenship in many ways. As our Nation observes this special week, let us remember our responsibilities to children and do everything in our power to inspire in them the moral and ethical standards that will, in turn, help them to become productive, integral members of our society.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 15 through October 21, 1995, as National Character Counts Week. I call upon government officials; educators; religious, community, and business leaders; and all the people of the United States to work for the preservation of traditional values and to commemorate this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



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Presidential Documents

Proclamation 6842 of October 14, 1995

National Forest Products Week, 1995

By the President of the United States of America

A Proclamation

America's forests are a priceless inheritance—one of our country's greatest treasures. From National Forests to State and local parks, from industrial timberlands to privately-owned lots, wooded areas offer us numerous gifts and promise future generations continued benefits. During National Forest Products Week, we renew our commitment to care for our woodlands and to preserve their capacity to sustain themselves.

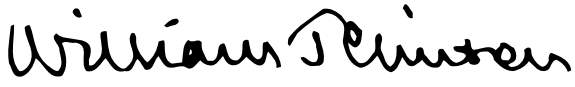
Providing nutrients and habitat to countless species—including those threatened or endangered—our Nation's forests extend their bounty to mankind as well. Many Americans depend on timberlands for their livelihood; countless people enjoy camping, hiking, and picnicking; and others seek out the woods to find peace and spiritual renewal. In addition, these rich tracts of land produce raw materials for building and other uses and are an essential source of food and medicines derived from trees, shrubs, forbs, fungi, and micro-organisms.

The current state of our forests requires our government, citizens, and the forestry industry to examine past and current forest management practices and to develop new strategies. We are moving toward a new era in stewardship with increased emphasis on forests that are diverse, robust, productive, and sustainable. Understanding that our wooded regions are part of a global mosaic of ecosystems, we must continue to promote public and private environmental responsibility and ensure that our conservation efforts set standards for the world to follow.

In recognition of the central importance of our forests to the welfare of our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15 through October 21, 1995, as National Forest Products Week. I call upon the people of the United States to honor the vital role America's forests play in our national life and to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



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