1–19–96
Vol. 61 No. 13
Pages 1273–1518

federal register

Friday
January 19, 1996

Briefings on How To Use the Federal Register
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WASHINGTON, DC

[Two Sessions]

WHEN: January 23, 1996 at 9:00 am and February 6, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–28]

RIN 1557–AB14

Capital; Capital Adequacy Guidelines

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule which was published Wednesday, December 20, 1995 (60 FR 66042). The final rule related to the risk-based capital requirements for claims on or guaranteed by a country that is a member of the Organization for Economic Cooperation and Development (OECD).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Geoffrey White, Senior International Economic Advisor, International Banking and Finance Department, (202) 874–5235; Saumya Bhavsar, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The amendatory instructions to the final rule incorrectly identified paragraphs (c)(20) and (c)(17) of section 1 of appendix A to part 3 as paragraphs (c)(19) and (c)(16), respectively.

Correction of Publication

Accordingly, the publication on December 20, 1995, of the final rule which was the subject of FR Doc. 95–30664, is corrected as follows:

On page 66044, in the second column, amendatory instruction 2 to appendix A to part 3, in the second line, ''(c)(19)'' should read ''(c)(20)''. On page 66044, in the second column, amendatory instruction 3 to appendix A to part 3, in the second line, ''(c)(16)'' should read ''(c)(17)''. On page 66044, in the third column, in the regulatory text, in the second line, ''(16)'' should read ''(17)''.

Dated: January 11, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–555 Filed 1–18–96; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 231

[Regulation EE; Docket No. R–0912]

Netting Eligibility for Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended Regulation EE to clarify that, for purposes of qualifying as a financial institution under Regulation EE, a person may represent that it is a financial market intermediary either orally or in writing. This amendment is intended to remove uncertainty in the financial markets as to the form of such representations.

EFFECTIVE DATE: February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For users of Telecommunications Device for the Deaf, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Act) (Pub. L. 102–242, §§ 401–407; 105 Stat. 2236, 2372–3; 12 U.S.C. 4401–4407) validates netting contracts among financial institutions. Parties to a netting contract agree that they will pay or receive the net, rather than the gross, payment due under the netting contract. The Act provides certainty that netting contracts will be enforced, even in the event of the insolvency of one of the parties. The Act's netting provisions are designed to promote efficiency and reduce systemic risk within the banking system and financial markets.

The netting provisions apply to bilateral netting contracts between two financial institutions and multilateral netting contracts among members of a clearing organization. Section 402(9) of the Act defines ''financial institution'' to include a depository institution, a securities broker or dealer, a futures commission merchant, and any other institution as determined by the Board. In addition, the Act's definition of ''broker or dealer'' (section 402(1)(B)) includes any affiliate of a registered broker or dealer, to the extent consistent with the Act, as determined by the Board.

In 1994, the Board adopted Regulation EE (12 CFR part 231) to expand the application of the Act's netting provisions to a broader range of financial market participants (59 FR 4780, February 2, 1994). Under Regulation EE, persons meeting certain tests based on market activity will qualify as ''financial institutions'' under the Act. The tests were designed to capture institutions that are significant market participants whose coverage could enhance market liquidity and whose failure without coverage could have systemic risk implications.

The Regulation EE tests have both a qualitative and a quantitative aspect. First, to qualify as a financial institution under the rule, a person [1] must represent that it will engage in financial contracts as a counterparty on both sides of one or more financial markets. Second, the person must meet one of two quantitative thresholds: It must have either (1) had one or more financial contracts of a total gross dollar value of at least $1 billion in notional principal amount outstanding on any day during the previous 15-month period with counterparties that are not its affiliates, or (2) had total gross mark-to-market positions of at least $100 million (aggregated across counterparties) in one or more financial contracts on any day during the previous 15-month period

[1] ''Person'' is defined broadly to include any legal entity, such as a corporation, partnership, or individual.

with counterparties that are not its affiliates.

Form of Representation

Regulation EE does not require a person to make the ''market intermediary'' representation in any particular form. Some market participants, however, have requested that the Board clarify that the representation can be made orally or in writing. The Board has amended § 231.3(a) of Regulation EE accordingly. The regulation does not require written representations (either as part of a financial contract or outside of the contract). Representations can be made orally and need not be made to a particular counterparty. This amendment should remove any lingering uncertainty in the financial markets as to the form of the representation as well as reduce the burden on any institutions that assumed the representation had to be in writing.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule applies only to entities with a large volume of financial contracts and, in any case, does not impose any additional requirements on entities affected by the regulation.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

Administrative Procedure Act

The Administrative Procedure Act generally requires agencies to publish a notice of proposed rule making before adopting a final rule (5 U.S.C. 553(b)). In certain circumstances, however, the Act allows an agency to forego to the notice-and-comment process. These circumstances include when the agency for good cause finds that notice and comment are unnecessary or contrary to the public interest (5 U.S.C. 553(b)(B)). The amendment to Regulation EE does not make a substantive change to the rule but rather clarifies that by not specifying a form of representation in the original rule, the Board intended that the representations could be made orally or in writing. The amendment clarifies a market uncertainty and may reduce burden for any institutions that assumed the representation had to be in writing. For these reasons, the Board finds that public comment is unnecessary and contrary to the public interest. Therefore, the Board finds that this amendment fits within the Act's exceptions from the notice-and-comment procedure.

List of Subjects in 12 CFR Part 231

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 231 is amended as set forth below:

PART 231—NETTING ELIGIBILITY FOR FINANCIAL INSTITUTIONS (REGULATION EE)

1. The authority citation for Part 231 continues to read as follows:

Authority: 12 U.S.C. 4402(1)(B) and 4402(9).

2. In § 231.3, the introductory text of paragraph (a) is revised to read as follows:

§ 231.3 Qualification as a financial institution.

(a) A person qualifies as a financial institution for purposes of sections 401–407 of the Act if it represents, orally or in writing, that it will engage in financial contracts as a counterparty on both sides of one or more financial markets and either—

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 11, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–506 Filed 1–18–96; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 615 and 620

RIN 3052–AB60

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 615 and 620 on November 24, 1995 (60 FR 57919). The final regulation relates to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System associations and banks for cooperatives are elected, consistent with cooperative principles. The final amendments permit regional election of directors. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 2, 1996.

EFFECTIVE DATE: The regulation amending 12 CFR parts 615 and 620 published on November 24, 1995 (60 FR 57919) is effective January 2, 1996.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: January 11, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–526 Filed 1–18–96; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–229–AD; Amendment 39–9483; AD 96–01–07]

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 a one-time inspection to verify that the attachment screws at a pressure switch located on the trim tank fuel transfer line are properly torqued, and that lockwires are installed. This amendment is prompted by reports of loose screws and missing lockwires at this attachment. The actions specified in this AD are intended to prevent loose or missing screws, which could allow fuel

to leak from the pressure switch connection; if a leak were to occur during flight with a full trim tank, there would be no warning indication to the flight crew, and the airplane may not have enough fuel to complete the flight safely.

DATES: Effective February 5, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–229–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 Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, on several production airplanes prior to delivery, the two screws that are used to install pressure switch 7QC, which is located on the trim tank fuel transfer line, were found to be loose. In two cases, the screws were neither lockwired nor properly torqued. In two other cases, lockwires were present, but the screws were not torqued to the correct value. This condition, if not corrected, could allow fuel to leak from the pressure switch connection. If a leak were to occur during flight with a full trim tank, there would be no warning indication to the flight crew, and the airplane may not have enough fuel to complete the flight safely.

Airbus has issued All Operators Telex 28–05, dated December 28, 1994, which describes procedures for a one-time inspection of the attachment screws of the pressure switch at the 7QC connection for correct torque value and proper lockwiring. The AOT also provides instructions for correcting these discrepancies if identified during the inspection. The DGAC classified this AOT as mandatory and issued French airworthiness directive (CN) 95–009–007(B) (applicable to Model A330 series airplanes), and CN 95–010–015(B) (for Model A340 series airplanes), both dated January 18, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) 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 prevent fuel leakage from the trim tank fuel transfer line due to loose attachment screws at the pressure switch 7QC connection. This AD requires a one-time inspection of the attachment screws of the pressure switch at the 7QC connection for correct torque value and proper lockwiring, and correction of any discrepancies found. The actions are required to be accomplished in accordance with the Airbus AOT 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 1 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 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–229–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:

96–01–07 Airbus: Amendment 39–9483. Docket 95–NM–229–AD.

Applicability: Model A330 series airplanes having manufacturer's serial number (MSN) 030, 037, 045, 054, 055, 059, 060, 062, or 070; and Model A340 series airplanes having MSN 005 through 009 inclusive, 011, 013 through 016 inclusive, 018 through 029 inclusive, 031, 032, 033, 035, 036, 038, 039, 040, 043, 046 through 049 inclusive, 051, 052, 053, 057, 058, 063, 074, 076, or 082; 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 fuel leakage from the trim tank fuel transfer line due to loose attachment screws at the pressure switch 7QC connection, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, inspect the attachment screws at the pressure switch 7QC connection for proper torque value and lockwiring, in accordance with Airbus All Operators Telex (AOT) 28–05, dated December 28, 1994.

(1) If any screw is not torqued to the correct value specified in the AOT, prior to further flight, torque the screw to that value.

(2) If any lockwire is missing, prior to further flight, install a lockwire in accordance with the AOT.

(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 and correction of discrepancies shall be done in accordance with Airbus All Operator Telex 28–05, dated December 28, 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 February 5, 1996.

Issued in Renton, Washington, on January 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–258 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–33–AD; Amendment 39–9474; AD 95–26–14]

Airworthiness Directives; Beech Aircraft Corporation Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Beech Aircraft Corporation (Beech) Model 1900D airplanes. This action will require inspecting the cabin partition to ensure that a right-hand forward partition bracket exists on certain airplanes, installing this bracket if it does not exist, and improving the right-hand forward partition installation on all affected airplanes. The actions specified by this AD are intended to prevent cabin partition failure because of a structural deficiency in the bracket or if the bracket is not installed, which, if not detected and corrected, could cause passenger injury if the partition could not withstand the load incurred with the baggage compartment loaded to its 250-pound limit.

DATES: Effective January 31, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–33–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: Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

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 Beech Model 1900D airplanes was published in the Federal Register on April 17, 1995 (60 FR 19172). The action proposed to require inspecting the right-hand forward partition on certain serial number airplanes to

ensure that the partition bracket exists, installing this bracket if it does not exist, and incorporating a structural improvement to the right-hand forward partition on all affected airplanes. Accomplishment of the proposed action will be in accordance with Kit Drawing No. 129–5007, as referenced in Beech Service Bulletin No. 2556, Revision 1, dated February 1995.

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. Since issuance of the NPRM, the FAA realized that it inadvertently miscalculated the cost impact upon the public, specifically the number of airplanes affected and the number of workhours necessary to accomplish the actions. The final rule has been revised to incorporate these updated cost figures. The FAA does not believe that these changes will adversely affect this AD action.

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 83 airplanes in the U.S. registry will be affected by the required inspection and possible installation and 91 airplanes worldwide will be affected by the required modification. The required inspection and possible installation will take approximately 6 workhours per airplane to accomplish and the required modification will take approximately 4 workhours to accomplish, with a labor rate of $60 an hour. Parts for the required modification cost approximately $650 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $103,750. This figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the modification and no airplane has a right-hand forward partition bracket installed and would need one installed.

Beech has informed the FAA that it has distributed parts (Kit No. 129–5007–1 S) to accommodate approximately 58 of the affected airplanes. Assuming that each of these distributed kits is incorporated on one of the affected airplanes, the cost of this AD would be further reduced by $72,500 from $103,750 to $31,250.

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 adding a new airworthiness directive (AD) to read as follows:

AD NO. 95–26–14 Beech Aircraft Corporation: Amendment 39–9474; Docket No. 94–CE–33–AD.

Applicability: Model 1900D airplanes, serial numbers UE–2 through UE–92, certificated in any category.

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

Compliance: Required within the next 400 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent cabin partition failure because of a structural deficiency, which, if not detected and corrected, could cause passenger injury if the partition could not withstand the load incurred with the baggage compartment loaded to its 250-pound limit, accomplish the following:

(a) For airplanes incorporating one of the following serial numbers: UE–2 through UE–68, UE–70 through UE–72, or UE–74 through UE–77, inspect the cabin partition to ensure that a right-hand partition bracket, part number (P/N) 129–530043–79, exists. If this bracket does not exist, prior to further flight, install this bracket with P/N MS27039–1–09 screws and P/N AN960PD10 washers in accordance with Kit Drawing No. 129–5007 as referenced in Beech Service Bulletin (SB) No. 2556, Revision 1, dated February 1995.

(b) For all affected serial numbers (UE–2 through UE–92), improve the right-hand forward partition installation in accordance with Kit Drawing No. 129–5007, as referenced in Beech SB No. 2556, Revision 1, dated February 1995.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) The installation and modification required by this AD shall be done in accordance with Kit Drawing No. 129–5007, as referenced in Beech Service Bulletin No. 2556, Revision 1, dated February 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. 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.

(f) This amendment (39–9474) becomes effective on January 31, 1996.

Issued in Kansas City, Missouri, on December 20, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–483 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–97–AD; Amendment 39–9478; AD 96–01–02]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped with Pratt & Whitney Model PW4460 and PW4462 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a new assembly, or a previously inspected and re-identified assembly. That amendment was prompted by reports of cracking in a certain aft mount beam assembly. This new amendment requires additional inspections to detect cracks or discrepancies in the subject area, and various follow-on actions. The actions specified by this amendment are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

DATES: Effective February 20, 1996.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 2, dated October 10, 1995, as listed in the regulations is approved by the Director of the Federal Register as of February 20, 1996.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 16, 1995 (60 FR 28527, June 1, 1995).

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–11–13, amendment 39–9246 (60 FR 28527, June 1, 1995), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the Federal Register on June 26, 1995 (60 FR 32926). [A correction of that rule was published in the Federal Register on June 15, 1995 (60 FR 31387).] The action proposed to continue to require the one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the aft mount beam assembly, if necessary. It also proposed to add etch fluorescent penetrant inspections as well as eddy current inspections to detect cracks or discrepancies in the aft mount beam assembly of the engines; and to require various follow-on actions.

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.

Two commenters request that the proposed rule be revised to cite the latest revision of McDonnell Douglas Alert Service Bulletin MD11–71A073 as an additional source of service information. The FAA concurs. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 2 of McDonnell Douglas Alert Service Bulletin MD11–71A073, dated October 10, 1995. Except for minor edits, this revised service bulletin is essentially identical to Revision 1 and does not entail any additional work on the part of affected operators. The FAA has revised the final rule to reference Revision 2 of the service bulletin as an additional source of service information.

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 57 Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4460 and PW4462 engines of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD.

The visual inspection that was previously required by AD 95–11–13, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection requirement on U.S. operators is estimated to be $2,040, or $120 per airplane. The FAA estimates that all affected U.S. operators have already accomplished this action; therefore, any future cost impact of this requirement is expected to be minimal.

The fluorescent penetrant and eddy current inspections that are required by this new AD will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the fluorescent penetrant and eddy current inspection requirements on U.S. operators is estimated to be $15,300, or $900 per airplane, per inspection cycle. This cost impact figure 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 removing amendment 39–9246 (60 FR 31387, June 15, 1995), and by adding a new airworthiness directive (AD), amendment 39–9478, to read as follows:

96–01–02 McDonnell Douglas: Amendment 39–9478. Docket 95–NM–97–AD. Supersedes AD 95–11–13, Amendment 39–9246.

Applicability: Model MD–11 series airplanes, equipped with Pratt & Whitney Model PW4460 and PW4462 engines; as listed in McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995; 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 (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.

To prevent loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane, accomplish the following:

(a) Within 60 days after June 16, 1995 (the effective date of AD 95–11–13, amendment 39–9246), perform a visual inspection to detect cracks or discrepancies in the aft mount beam assembly, part number (P/N) 221–0261–501, of engine numbers 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, or Revision 2, dated October 10, 1995.

(1) If no cracks or discrepancies are detected, no further action is required by paragraph (a) of this AD.

(2) If any crack or discrepancy is detected, prior to further flight, replace the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or an assembly having P/N 221–0261–501 that has been previously inspected and re-identified, in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of the alert service bulletin. Replacement shall be accomplished in accordance with the procedures specified in either alert service bulletin.

(b) Within 4,000 flight cycles after accomplishing any inspection required by this AD, perform etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, or Revision 2, dated October 10, 1995.

(1) If no crack or discrepancy is detected, prior to further flight, re-identify and install the aft mount beam assembly in accordance with the alert service bulletin.

(2) If any crack or discrepancy is detected, prior to further flight, replace the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or an assembly having P/N 221–0261–501 that has been previously inspected and re-identified, in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of the alert service bulletin. Replacement shall be accomplished in accordance with the procedures specified in the alert service bulletin.

(c) Within 10 days after accomplishing any inspection required by this AD, report inspection results, positive or negative, to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. 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.

(d) As of June 16, 1995 (the effective date of AD 95–11–13, amendment 39–9246), no person shall install an aft mount beam assembly, P/N 221–0261–501, on any airplane, unless it has been previously inspected and re-identified in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, or Revision 2, dated October 10, 1995.

(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 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 2: 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 inspections and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, or McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 2, dated October 10, 1995. The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 2, dated October 10, 1995, is 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 Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, 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 as of June 16, 1995 (60 FR 28527, June 1, 1995). Copies 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, 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.

(h) This amendment becomes effective on February 20, 1996.

Issued in Renton, Washington, on December 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–533 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–06–AD; Amendment 39–9486; AD 96–02–01]

Airworthiness Directives; S.N. CentrAir Model 201 (All Types) Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to S.N. CentrAir Model 201 (all types) sailplanes. This action requires replacing all aileron balancing mass screws made of brass with screws made of steel, inspecting all steel screws for tightness, replacing any loose screws, and applying a normal screw thread safety bond. Incorrect fastening of the aileron balancing mass found on a Model 201 sailplane in France prompted this action. The actions specified in this AD are intended to prevent aileron failure and flutter caused by incorrect fastening of the aileron mass balance, which, if not detected and corrected, could result in loss of control of the sailplane.

DATES: Effective February 29, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from S.N. CentrAir, Aerodome, 36300 Le Blanc, France. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–06–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: Mr. Herman Belderok, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain S.N. CentrAir Model 201 (all types) sailplanes. The DGAC reports that the aileron balancing mass was found incorrectly fastened on a Model 201 sailplane. This condition, if not corrected, could adversely affect the controllability of the sailplane.

S.N. CentrAir has issued Service Bulletin (SB) No. 201–11, dated February 26, 1992. This service bulletin references disassembly of each aileron, replacement of all aileron balancing mass screws made of brass with screws made of steel, inspection of all steel screws for correct tightness, and application of a normal screw thread safety bond.

This sailplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) 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 S.N. CentrAir Model 201 (all types) sailplanes of the same type design registered in the United States, this AD requires replacing all aileron balancing mass screws made of brass with screws made of steel, inspecting all steel screws for tightness, replacing any loose screws, and applying a normal screw thread safety bond. Accomplishment of these actions would be in accordance with the applicable maintenance or service manual.

None of the Model 201 sailplanes affected by this action are on the U.S. Register. All sailplanes 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 this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject sailplanes are imported and placed on the U.S. Register.

Should an affected sailplane be imported and placed on the U.S. Register, accomplishment of the required replacement and inspection would take approximately 4 workhours at an average labor charge of $60 per workhour. Parts cost approximately $10 per sailplane. Based on these figures, the total cost impact of this AD would be $250 per sailplane that would become registered in the United States.

Since this AD action does not affect any sailplane 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 No. 95–CE–06–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, 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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–02–01 S.N. Centrair: Amendment 39–9486. Docket 95–CE–06–AD.

Applicability: Model 201 (all types) sailplanes (all serial numbers), certificated in any category.

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

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent aileron failure and flutter caused by incorrect fastening of the aileron mass balance, which, if not detected and corrected, could result in loss of control of the sailplane, accomplish the following:

(a) Using procedures in the applicable maintenance or service manual, disassemble the aileron of each wing and accomplish the following:

(1) Replace all aileron balancing mass screws made of brass with screws made of steel, F/90 M4 x 16 (available at S.N. CentrAir under reference 400047).

(2) Inspect all steel aileron balancing mass screws for tightness, and replace any loose screws with F/90 M4 x 16 screws (available at S.N. CentrAir under reference 400047).

(3) Apply a normal screw thread safety bond.

Note 2: CentrAir Service Bulletin No. 201–11, dated February 26, 1992, refers to this subject. The procedures for accomplishing this action are included in the applicable maintenance or service manual.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to S.N. CentrAir, Aerodome, 36300 Le Blanc, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–9486) becomes effective on February 23, 1996.

Issued in Kansas City, Missouri, on January 5, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–481 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges To Dispense With Briefs, To Hear Oral Argument in Lieu of Briefs, and To Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Notice of Extension of Experimental Modifications.

SUMMARY: In light of the most recent shutdown of Agency operations due to the lack of appropriated funds, the National Labor Relations Board (NLRB) is extending, from January 31, 1996, until March 1, 1996, the one-year experiment it commenced on February 1, 1995, authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions. In a related document published elsewhere in today's Federal Register, the NLRB is also extending, from December 29, 1995, until January 25, 1996, the deadline for filing comments in response to its recent proposal to make permanent, following expiration of the experimental period, the experimental modifications.

DATES: Effective January 16, 1996, the experimental modifications to the Board's rules are extended from January 31, 1996, until March 1, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

On December 22, 1994, following consideration of the comments received to the NPR, the Board issued a notice implementing, on a one-year

experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

On December 1, 1995, following a review of the experience to date with the modifications and the views of the NLRB's Advisory Committee on Agency Procedure, the Board issued a notice proposing to make the modifications permanent upon expiration of the one-year experimental period on January 31, 1996 (60 FR 61679). The notice provided for a period of public comment on this proposal, until December 29, 1995.

Beginning December 18, 1995, during the comment period, and continuing through January 5, 1996, the Agency's offices were closed due to the lack of appropriated funds. As a result, both the experiment and the comment period were interrupted.

Accordingly, in a related notice published elsewhere in today's Federal Register, the Board has extended from December 29, 1995, until January 25, 1996, the deadline for filing comments. In order to allow the Board time to consider the comments, the Board has decided to also extend the experimental period from January 31, 1996, until March 1, 1996.

Dated, Washington, D.C., January 16, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–582 Filed 1–18–96; 8:45 am]

BILLING CODE 7545–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Third Meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the dates of the third meeting of the ''Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act'' (the Committee). A Notice of Intent to form the Committee was published in the Federal Register on August 31, 1995, 60 FR 45388, and a Notice of Establishment of the Committee was published in the Federal Register on October 20, 1995, 60 FR 54207. The Committee had its first meeting on December 6–7, 1995 in Washington, D.C.

DATES: The third meeting will be held on February 6–7, 1996, beginning at 10 a.m. on February 6. It is anticipated that the meeting will last for two days. The session of February 7, 1996 will commence at 9 a.m.

ADDRESSES: The meeting will be held at the EEOC Headquarters, 1801 L Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, N.W., Washington, D.C. 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: All Committee meetings, including the meeting of February 6–7, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda

At the second meeting, the Committee will continue to discuss the unsupervised waiver legal issues that will be considered by the Committee in drafting a recommended notice of proposed rulemaking for EEOC approval.

Dated: January 11, 1996.

Frances M. Hart,

Executive Officer.

[FR Doc. 96–553 Filed 1–18–96; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 585

Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations; Partial Suspension of Sanctions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations to authorize prospectively all transactions with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) otherwise prohibited, while assets previously blocked remain blocked. The rule also permits the return to nonblocked remitters of certain funds transfers interdicted during the period of the sanctions. Certain other interdicted transfers are directed to be deposited into blocked accounts.

EFFECTIVE DATE: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, Dennis P. Wood, Chief of Compliance Programs, tel.: 202/622–2490 or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disks or paper copies. This file is available for downloading without charge in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On November 21, 1995, in Dayton, Ohio, the presidents of the Federal Republic of Yugoslavia (Serbia and Montenegro) (the ''FRY (S&M)''), the Republic of Bosnia and Herzegovina, and the Republic of Croatia initialled the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (collectively, the ''Peace Agreement''), which was signed by the parties in Paris on December 14, 1995. On November 22, the United Nations Security Council passed Resolution 1022 (the ''Resolution''), immediately and indefinitely suspending economic sanctions against the FRY (S&M). Sanctions against the Bosnian Serb forces and authorities and the areas of the Republic of Bosnia and Herzegovina that they control remain in effect until their troop withdrawal to agreed borders. In addition, the Resolution provides for the release of funds and assets previously blocked pursuant to sanctions against the FRY (S&M), provided that such funds and assets that are subject to claims and encumbrances, or that are the property of persons deemed insolvent, remain blocked until ''released in accordance with applicable law.'' The Resolution further provides that the unblocking of assets must be effected without prejudice to the claims of successor states to the Former Socialist Federal Republic of Yugoslavia. Finally, the Resolution provides for the reimposition of sanctions against the FRY (S&M) if either the FRY (S&M) or the Bosnian Serbs fail significantly to meet their obligations under the Peace Agreement.

Suspension of Sanctions

In light of the Resolution, and pursuant to the requirements of section 1511(e)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), the President has issued Presidential Determination No. 96–7 of December 27, l995, directing the Secretary of the Treasury to take appropriate action to suspend the application of the sanctions imposed pursuant to Executive Orders No. 12808 of May 30, l992, 12810 of June 5, l992, 12831 of January 15, l993, and 12846 of April 25, l993. Therefore, the Office of Foreign Assets Control is amending the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585 (the ''Regulations''), by adding § 585.525 to the Regulations to authorize prospectively those transactions previously prohibited with respect to the FRY (S&M). With the exceptions set forth below, property and interests in property previously blocked remain blocked until provision is made to address claims or encumbrances with respect to such property and interests in property, including the claims of the successor states of the former Yugoslavia. The United States is currently examining options to address claims.

Debt Trading Involving FRY (S&M) Interests

Debt for which the former National Bank of Yugoslavia or a bank located in the FRY (S&M) bears joint or several liability remains blocked and secondary market trading remains governed by 585.509, except for prospective transactions of U.S. persons involving debt that was not subject to U.S. jurisdiction immediately prior to the suspension of sanctions against the FRY (S&M) on January 16, 1996. Thus, pursuant to § 585.509(b), trading is not permitted in debt representing original borrowings of Serbian or Montenegrin banks, or of the former National Bank of Yugoslavia where another original obligor cannot be determined, that was held in the United States or in the possession or control of a U.S. person immediately prior to January 16, 1996. Trading by U.S. persons in such debt that was not subject to U.S. jurisdiction immediately prior to January 16, 1996, such as Serbian or Montenegrin debt held abroad by non–U.S. persons, is not prohibited because the debt was not property blocked by U.S. law.

Similarly, the conditions in § 585.509(a) and (d)(1) and (d)(2) on trading in blocked debt representing original obligations of banks in Bosnia, Croatia, Macedonia or Slovenia, continue to apply to such debt held within the United States or in the possession or control of a U.S. person immediately prior to January 16, 1996. Debt eligible for trading under these provisions, however, may now also be traded with persons whose property and interests in property were blocked pursuant to § 585.201(a), (b) or (d) prior to January 16, 1996 (including the Government of the FRY (S&M) and entities organized or located in the FRY (S&M)). The certification and reporting requirements of § 585.509(c) and (d)(3) no longer apply with respect to trading in such debt with or on behalf of these persons. U.S. persons continue to be prohibited from trading in such debt with persons blocked pursuant to § 585.201(c) (pertaining to the Bosnian Serbs).

Funds Transfers

The Regulations are further amended to add § 585.526, authorizing by general license the unblocking and return to remitters of funds which came into the possession or control of U.S. financial institutions through wire transfer instructions or check remittances that were not destined for an account established by a blocked person on the books of a U.S. financial institution. Such funds may not, however, be returned if they were remitted by or through the Government of the FRY (S&M) or another person whose property or interests in property were blocked pursuant to § 585.201 of the Regulations prior to the suspension of sanctions.

The authorization contained in § 585.526 does not apply to transfers of funds originally destined for credit to accounts established by blocked persons on the books of U.S. financial institutions. Such funds are directed to be transferred for credit to such accounts, to be maintained in a blocked status.

Finally, it is emphasized that the authorizations contained in §§ 585.525 and 585.526 do not apply to property and interests in property of the Bosnian Serb forces and authorities and entities organized or located in those areas of the Republic of Bosnia and Herzegovina under their control; entities owned or controlled directly or indirectly by any person in, or resident in, those areas; and any person acting for or on behalf of any of the foregoing.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 585

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Transportation, Yugoslavia.

For the reasons set forth in the preamble, 31 CFR part 585 is amended as set forth below:

1. The authority citation for part 585 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930.

Subpart E –– Licenses, Authorizations, and Statements of Licensing Policy

2. Section 585.525 is added to subpart E to read as follows:

§ 585.525 Authorization of certain new transactions with respect to the FRY (S&M).

(a) Notwithstanding the provisions of subpart B of this part, transactions and activities otherwise prohibited by §§ 585.201(a)(b) & (d) (blocked property), 585.204 (imports), 585.205 (exports), 585.206 (dealing in exports and imports), 585.207 (transportation–related transactions), 585.208 (aircraft), 585.209 (performance of contracts), 585.210 (transfer of funds), 585.211 (sporting events), 585.212 (scientific and technical cooperation, cultural exchanges), 585.215 (detention of conveyances and cargo), 585.217(a) (entry of U.S. vessels into territorial waters), 585.218(a) (insofar as that paragraph relates to trade in the United Nations Protected Areas of Croatia), and the restrictions on certain travel–related transactions (including those for commercial travel) delineated in § 585.512, are hereby authorized on or after January 16, 1996, provided that no such transaction results in a debit to an account blocked prior to December 27, 1995, or a transfer of property blocked prior to December 27, 1995, unless such debit or transfer is independently authorized by or pursuant to this part.

(b)(1) All provisions of § 585.509 continue to apply to debt for which the National Bank of Yugoslavia or a bank located in the FRY (S&M) bears joint or several liability and which, immediately prior to January 16, 1996, was held in the United States or was within the possession or control of a U.S. person, except that the certification and reporting requirements contained in § 585.509(c) and (d)(3) no longer apply to transactions with or for the benefit of persons with respect to whom the blocking provisions of § 585.201(a),(b) and (d) have been suspended pursuant to this section.

(2) Transactions by U.S. persons involving debt for which the National Bank of Yugoslavia or a bank located in the FRY (S&M) bears joint or several liability but that was not held in the United States or within the possession or control of a U.S. person immediately prior to January 16, 1996 are authorized, provided that no debit or transfer to a blocked account is authorized.

(c) Transactions and activities prohibited by §§ 585.201(c) (blocked property), 585.217(b) (entry of U.S. vessels into riverine ports), 585.218(a) (insofar as that paragraph relates to trade in Bosnian Serb–controlled areas of Bosnia and Herzegovina), and 585.218(b) (services to Bosnian Serb–controlled areas), remain prohibited and are not authorized by this section.

(d) The authorizations contained in this section do not eliminate the need to comply with regulatory requirements not administered by the Office of Foreign Assets Control, including aviation, financial and trade requirements administered by other federal agencies.

4. Section 585.526 is added to subpart E to read as follows:

§ 585.526 Authorization for release of certain blocked transfers by U.S. financial institutions.

(a) U.S. financial institutions are authorized to unblock and return to the remitting party funds which came into their possession or control through wire transfer instructions or check remittances that were not destined for an account on the books of a U.S. financial institution, which account was established by a person whose property or interests in property were blocked immediately prior to January 16, 1996 pursuant to § 585.201 (a ''blocked person''), provided that the funds may not be so unblocked and returned if they were remitted by or through a blocked person.

(b)(1) Nothing in this section authorizes the unblocking and release of funds destined for credit:

(i) to accounts established by blocked persons on the books of U.S. financial institutions; or

(ii) to Beogradska Banka d.d. New York Agency or Jugobanka d.d. New York Agency for further credit to account holders. Both banks are blocked persons.

(2) Funds described in paragraph (b)(1) of this section that are not already held in an account described in paragraph (b)(1)(i) must be transferred to such an account by January 29, 1996, where the funds must be maintained in blocked status pursuant to § 585.201. Nothing in this section authorizes transfers involving property or property interests blocked pursuant to § 585.201(c) (blocking property and interests in property of the Bosnian Serb forces and authorities in the areas of the Republic of Bosnia and Herzegovina such forces control; entities organized or located in those areas; entities owned or controlled directly or indirectly by any person in, or resident in, those areas; and any person acting for or on behalf of any of the foregoing persons).

Dated: January 4, 1996.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: January 5, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–639 Filed 1–16–96; 4:48 pm]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5400–3]

RIN 2060–AF35

Protection of Stratospheric Ozone: Listing of Global Warming Potential for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final listing.

SUMMARY: With this action, the Environmental Protection Agency (EPA or the Agency) lists the global warming potentials for ozone-depleting substances that are included as class I and class II controlled substances, or have been added as class I or class II controlled substances, under authority of section 602(e) of the Clean Air Act Amendments of 1990 (CAA). Class I and class II controlled substances are more fully described in a final rule previously published in the Federal Register on May 10, 1995 (60 FR 24970). To meet EPA's statutory obligation under the CAA, this listing cites the global warming potentials contained in the document, Scientific Assessment of Ozone Depletion: 1994, published by the United Nations Environment Programme (UNEP) in early 1995. As stated in the CAA, the listing of global warming potentials for class I and class II controlled substances ''shall not be construed to be the basis of any additional regulation under this Act.''

DATES: This rule is effective on January 19, 1996.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Hotline at 1–800–296–1996, or Tom Land, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Stratospheric Protection Division (6205J), 401 M

Street, SW, Washington, DC 20460, (202)–233–9185.

SUPPLEMENTARY INFORMATION:

I. Proposal

As required by section 602(e) of the CAA, EPA published a notice of proposed listing on October 6, 1995, and solicited public comment. As stated in that proposal, EPA relied on three scientific documents in determining gobal warming potential (GWPs). EPA is referencing those three scientific documents and the list of GWPs they contain in order to meet the Agency's statutory obligations under section 602(e) of the CAA to publish GWPs for class I and class II controlled substances. These documents are also referenced in part, for their discussions of different radiative forcing indices and the indirect effects of ozone-depleting substances on radiative forcing. These documents demonstrate the state of knowledge and the uncertainties involved in calculating the GWPs for class I and class II controlled substances.

The citation for the three scientific documents that report on GWPs for class I and class II controlled substances are:

United Nations Environment Programme (UNEP), February 1995, Scientific Assessment of Ozone Depletion: 1994, Chapter 13: ''Ozone Depleting Potentials, Global Warming Potentials and Future Chlorine/Bromine Loading;''

Intergovernmental Panel on Climate Change (IPCC), 1995, Climate Change 1994: Radiative Forcing of Climate Change and An Evaluation of the IPCC IS92 Emission Scenarios, ''Summary for Policymakers: Radiative Forcing of Climate Change,'' pages 32–34; and

Daniel, John S., Susan Solomon and Daniel L. Albritton, January 20, 1995, Journal of Geophysical Research, Vol. 100, No. D1, ''On the evaluation of halocarbon radiative forcing and global warming potentials.''

Chapter 13 in the UNEP, Scientific Assessment and pages 32 through 34 in the IPCC, Summary for Policymakers describe the factors considered in calculating various radiative forcing indices, such as (1) the direct GWP, (2) the absolute global warming potential (AGWP), and (3) the net GWP per unit mass emission. Chapter 13 of the Scientific Assessment and the article by John S. Daniel, et al. in the Journal of Geophysical Research describe the indirect feedback effects of ozone-depleting substances on the temperature of the atmosphere, and therefore the potential indirect effects that depletion of stratospheric ozone has on the calculation of the GWP.

The October 6, 1995 proposed listing contained a full discussion of the relevant science. That discussion will not be repeated in this notice.

II. Comment on Proposal

EPA received one comment on the proposed listing of GWPs for class I and class II controlled substances. The comment suggested that cautionary language be included in order to prepare the reader for changing scientific estimates of GWPs, citing work by the IPCC on the Second Scientific Assessment of Climate Change that will be published early in 1996. EPA adopted these suggestions and changed the caption to Appendix I accordingly.

No comments were received on the proposed GWPs.

III. Listing GWPs for class I and class II Controlled Substances

With today's action, EPA publishes the GWPs that are listed for class I and class II controlled substances in the Scientific Assessment of Ozone Depletion: 1994 issued by the United Nations Environment Programme (UNEP) under the auspices of the Montreal Protocol in February of 1995. The GWPs for class I and class II controlled substances as published in the Scientific Assessment are in Appendix I to Subpart A—Global Warming Potentials.

As discussed in the October 6, 1995 proposed listing, the Scientific Assessment of Ozone Depletion: 1994 does not list a GWP for every controlled substance that is listed in Appendices A and B to Subpart A as most recently promulgated in the Federal Register on May 10, 1995. For some ozone-depleting chemicals scientists have not developed a full infrared spectrum that is necessary to calculate the relative radiative forcing potential of a substance. Each chemical absorbs the Earth-emitted infrared radiation in specific energy (or wavelength) bands determined by the quantum-mechanical properties of the specific molecule.[1] Scientists have not measured the spectral region in which some of the ozone-depleting substances absorb infrared radiation. In addition, more data must be collected on the tropospheric distribution and concentration of some of the chemicals, their atmospheric lifetimes, and the interactive atmospheric chemistry in order to complete a calculation of the global warming potential for the remaining ozone-depleting substances. Scientific centers and academic institutions throughout the world are undertaking the necessary measurements and studies that are needed to complete the calculations of GWPs for other ozone-depleting substances, as well as to revise GWPs for those substances listed in Appendix I. EPA believes it is not possible at this time to publish GWPs for every ozone-depleting substance listed in Appendix A and B to Subpart A because the necessary scientific information is not available. EPA will continue to evaluate GWPs for class I and class II controlled substances not listed in today's action, and revisions to the GWPs for substances that are listed, and as deemed appropriate, amend the listing through future actions.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: December 26, 1995.

Carol Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Appendix I is added to subpart A to read as follows:

Appendix I to Subpart A—Global Warming Potentials (mass basis), referenced to the Absolute GWP for the adopted carbon cycle model CO_2 decay response and future CO_2 atmospheric concentrations held constant at current levels. (Only direct effects are considered.)

[1] Wuebbles, Donald J., 1995, ''Weighing Functions for Ozone Depletion and Greenhouse Gas Effects on Climate,'' Annual Review of Energy and Environment, 20:45–70.

Species (chemical)	Chemical formula	Global warming potential (time horizon)		
		20 years	100 years	500 years
CFC–11	$CFCl_3$	5000	4000	1400
CFC–12	CF_2Cl_2	7900	8500	4200
CFC–13	$CClF_3$	8100	11700	13600
CFC–113	$C_2F_3Cl_3$	5000	5000	2300
CFC–114	$C_2F_4Cl_2$	6900	9300	8300
CFC–115	C_2F_5Cl	6200	9300	13000
H–1301	CF_3Br	6200	5600	2200
Carbon Tet	CCl_4	2000	1400	500
Methyl Chl	CH_3CCl_3	360	110	35
HCFC–22	CF_2HCl	4300	1700	520
HCFC–141b	$C_2FH_3Cl_2$	1800	630	200
HCFC–142b	$C_2F_2H_3Cl$	4200	2000	630
HCFC–123	$C_2F_3HCl_2$	300	93	29
HCFC–124	C_2F_4HCl	1500	480	150
HCFC–225ca	$C_3F_5HCl_2$	550	170	52
HCFC–225cb	$C_3F_5HCl_2$	1700	530	170

United Nations Environment Programme (UNEP), February 1995, Scientific Assessment of Ozone Depletion: 1994, Chapter 13, ''Ozone Depleting Potentials, Global Warming Potentials and Future Chlorine/Bromine Loading,'' and do not reflect review of scientific documents published after that date.

[FR Doc. 96–587 Filed 1–18–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[FCC 95–506]

Modification of the ''Build-Out'' Construction Requirements for the Interactive Video and Data Service (IVDS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* to eliminate the one-year ''build-out'' requirement for the IVDS, while retaining the three-year and five-year build-out requirements. This action will allow the IVDS industry additional time to develop and deploy new and innovative applications.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Donna Kanin, (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is the final version of the Commission's *Report and Order,* FCC 95–506, adopted December 14, 1995, and released January 16, 1996. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

I. Introduction

1. On July 31, 1995, the Commission adopted a Notice of Proposed Rule Making (Notice), 60 FR 43105, August 18, 1995, proposing to eliminate the one-year construction ''build-out'' requirement for Interactive Video and Data Service (IVDS)[1] licensees.[2] No change was proposed concerning the three-year and five-year construction requirements. We initiated the Notice in response to requests by several IVDS licensees [3] that won their licenses in the IVDS auction held July 28–29, 1994. This *Report and Order* amends Section 95.833(a) of the Commission's Rules [4] to eliminate the one-year build-out requirement as proposed. This action will allow the IVDS industry additional time to develop and deploy new and innovative applications, such as commercial data distribution services and inventory monitoring services.

II. Background

2. Section 95.833(a) of the Commission's Rules specifies that each IVDS licensee must make service available to at least ten percent of the population or geographic area within the licensee's service area within one year of the grant of the license, thirty percent within three years, and fifty percent within five years. As indicated in the Notice,[5] Section 95.833(a) was crafted in 1992 when it was anticipated that licenses would be awarded by lottery.[6] These build-out requirements were intended ''to reduce the filing of speculative applications by entities that have no real intention of implementing [IVDS] systems and to avoid the potential for warehousing of IVDS spectrum.'' [7] We stated in the Notice that the use of auctions to award licenses reduces the incentives for speculation, and therefore, tentatively concluded that the one-year benchmark is unnecessary.[8] The Commission received six comments and two reply comments in response to the Notice.[9]

III. Discussion

3. *Comments.* Generally, the commenters favor the elimination of the one-year construction requirement. Erwin Aguayo, Jr. (Aguayo), the Coalition of IVDS Licensees [10] (Coalition) and EON Corporation (EON) agree that the auction rules preclude the need for the one-year build-out

[1] IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service in which licensees may provide information, products, or services to individual subscribers at fixed locations within a service area, and subscribers may provide responses.

[2] *Notice of Proposed Rule Making, (Notice),* WT Docket No. 95–131, 10 FCC Rcd 8700 (1995).

[3] *Id.* at footnote 5.

[4] 47 CFR § 95.833(a).

[5] *Notice* at para. 3.

[6] The eighteen IVDS licensees that received their licenses as a result of a lottery held September 15, 1993, have already passed their one year build-out deadline. We waived the one year deadline for 17 of the 18 licenses. These 17 licenses are required to meet the three year/30 percent construction deadline in March, 1997.

[7] *See Report and Order* in GEN Docket No. 91–2, 7 FCC Rcd 1630, 1640 ¶ 73 (1992), 57 FR 8272, March 9, 1992; *see also Memorandum Opinion and Order* in GEN Docket No. 91–2, 7 FCC Rcd 4923, 4925 ¶ 13 (1992), 57 FR 36372, August 13, 1992.

[8] *Notice* at para. 3.

[9] A list of the commenting parties is provided in Appendix A of the *Report and Order.*

[10] Coalition members are listed in Appendix A of the *Report and Order.*

requirement.[11] Aguayo states that by amending the rules as proposed, the Commission will provide IVDS licensees with the necessary opportunity for flexibility in establishing their IVDS services.[12] EON states that the introduction of auctions to assign IVDS licenses has created significant short-term incentives for licensees to begin service as quickly as possible, and has reduced the risk of speculation in the IVDS license application process.[13] Moreover, the Coalition of IVDS Licensees (Coalition) asserts that not only is the one-year benchmark unnecessary, but it will also impede the viability and evolutionary development of the IVDS spectrum. By requiring IVDS licensees to construct facilities prior to the full development of commercially viable services, the Coalition believes that the construction requirement will impede the development of new and innovative services.[14] ITV, Inc. (ITV) and IVDS Affiliates, LLC (IALC) support eliminating the one-year deadline, but at the same time, recommend that the Commission establish a two-year, ten percent deadline for lottery and auction winners.[15] They argue that two years would be sufficient for lottery winners to demonstrate the function of their respective IVDS systems and competing technologies, but not halt IVDS development. Secondly, ITV and IALC assert that such an amendment will permit auction winners to initiate service in a timely fashion.[16]

4. While supporting the proposal, EON, ITV and IALC assert that lack of equipment should not be the rationale for the proposed rule change. EON claims that its equipment will be commercially available before the one-year construction benchmark,[17] but emphasize that IVDS licensees' equipment choices and short-term deployment schedules should be based on market conditions, rather than arbitrary regulatory constraints.[18] Similarly, ITV and IALC state that they have developed a product line of IVDS equipment for data distribution, which they are marketing to licensees.[19] Radio Telecom and Technology, Inc. (RTT), a manufacturer of IVDS equipment, is the only commenter that takes no position as to the elimination of the one-year build-out requirement.[20]

5. Additionally, the Notice proposed to retain the three-year and five-year construction benchmarks. EON, the Coalition, ITV and IALC agree.[21] The Coalition believes that eliminating the one-year benchmark and retaining the other benchmark strikes an appropriate balance between the licensees' ability to manage intelligently their investments, and the public's interest in receiving interactive service on a timely basis.[22] EON concurs that the three-year and five-year benchmarks are appropriate means for the Commission to meet its Congressional mandate to promote investment in and rapid deployment of new technologies and services.[23] ITV and IALC further emphasize that the IVDS equipment market cannot develop without strictly enforced three and five-year construction deadlines.[24] Alternatively, Richard L. Vega (Vega) argues that the three-year benchmark should also be eliminated.[25] According to Vega, it too has become an outdated, unnecessary, and unduly burdensome requirement for license holders. Vega states that the public, as well as the fledgling IVDS industry, would benefit from a one-time, five-year, build-out requirement, allowing licensees an opportunity to focus completely on the technology selection process.

6. *Decision*. We are adopting the proposal to eliminate the one-year, ten percent construction requirement. As the Coalition states, the one-year construction requirement impedes the viability and evolutionary development of the IVDS spectrum. Aguayo also points out that amending the rules, as proposed, will provide IVDS licensees with the necessary opportunity for flexibility in establishing their IVDS services. EON further emphasizes that IVDS licensees' equipment choices and short-term deployment schedules should be based on market conditions, rather than arbitrary regulatory constraints. We conclude that eliminating the one-year construction requirement will provide licensees with greater flexibility in selecting service options, obtaining financing, selecting equipment, and other considerations relating to construction of their systems. Such action will, in turn, promote the development of the IVDS industry. Moreover, we believe the one-year construction benchmark is unnecessary to prevent spectrum warehousing. The use of auctions, rather than lotteries, to award licenses reduces the potential for spectrum warehousing and, as EON indicates, the introduction of auctions to assign IVDS licenses creates significant short-term incentives for licenses to begin service as quickly as possible. Finally, all of the commenters support this action except RTT, who takes no position regarding the one-year build-out.

7. Further, as proposed, we will retain the three-year and five-year build-out benchmarks. These benchmarks are consistent with the statutory requirement for performance benchmarks for licenses obtained through competitive bidding,[26] and will ensure the timely delivery of service to the public. At the same time, we decline to adopt the suggestions offered by Vega, ITV and IALC. We believe that Vega's request to eliminate the three-year benchmark would not promote rapid delivery of new technologies and services to the public. Additionally, we believe ITV's and IALC's suggestion to create a two-year, ten percent benchmark in lieu of the one-year, ten percent benchmark, while retaining the three-year benchmark, is unnecessary. Imposing the first benchmark at two years, rather than three years, would give auction winners less time and flexibility to make the critical business decisions described above. Further, a two-year, ten percent build-out requirement, in light of our auction framework and the three-year and five-year requirements, is unnecessary to prevent speculation and warehousing.

IV. Procedural Matters

8. Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1165.5 U.S.C. 603, *et seq.* (1981), the Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the *Notice of Proposed Rule Making* in WT Docket No. 95–131. Written comments on the IRA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. *Need and Purpose of the Action.* Our objective is to allow IVDS licensees greater flexibility in equipment and construction decisions, while meeting the Congressional mandate for specific performance standards in auctionable services.

B. *Issues Raised in Response to the Initial Analysis.* There were no

[11] Aguayo comments at 1–2; Coalition comments at 3; EON comments at 1–2.

[12] Aguayo comment at 2.

[13] EON comments at 1–2.

[14] Coalition comments at 2–4.

[15] ITV and IALC reply comments at 2–3.

[16] *Id.*

[17] EON comments at 2.

[18] *Id.*

[19] ITV and IALC comments at 3.

[20] RTT's comments at 1–2.

[21] Coalition comments at 3–4; EON comments at 2–3, ITV and IALC comments at 5–6.

[22] Coalition comments at 3–4.

[23] EON comments at 3.

[24] ITV and IALC comments at 4–6.

[25] Vega comments at 2–4.

[26] Section 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(4)(B).

comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. *Significant Alternatives Considered and Rejected.* All significant alternatives have been addressed in this *Report and Order.*

D. *Description, Potential Impact, and Number of Small Entities Involved.* These adopted rule changes will allow greater business opportunities and greater flexibility in the business decisions of IVDS licensees, many of which are small businesses.

V. Ordering Clauses

9. Accordingly, *it is ordered* that Part 95 of the Commission's Rules and Regulations *is amended* as specified below. This action is taken pursuant to Section 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

10. *It is further ordered* that these amendments are effective January 19, 1996. These rule changes relieve a restriction and, therefore, are not subject to the 30-day effective date provision of the Administrative Procedure Act. *See* 5 U.S.C. 553(d)(1).

11. *It is further ordered* that this proceeding *is terminated.*

12. For further information, contact Donna L. Kanin, Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street, N.W., Room 8010, Mail Stop 2000–F, Washington, D.C. 20554; (202) 418–0680.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.831 is revised to read as follows:

§ 95.831 Service requirements.

Subject to the initial construction requirements of Section 95.833, each IVDS system licensee must make the service available to at least 50 percent of the population or land area located within the service area.

2. Section 95.833 is revised to read as follows:

§ 95.833 Construction requirements.

(a) Each IVDS system licensee must make the service available to at least 30 percent of the population or land area within the service area within three years of grant of the IVDS system license, and 50 percent of the population or land area within five years of grant of the IVDS system license. Failure to do so will cancel the IVDS system license automatically. For the purposes of this section, a CTS is not considered as providing service unless that CTS and two associated RTUs are placed in operation.

(b) Each IVDS system licensee must file a progress report at the conclusion of each of the two benchmark periods to inform the Commission of the construction status of the system. The report must be addressed to: Federal Communications Commission. Wireless Telecommunications Bureau, Special Services Branch, 1270 Fairfield Road, Gettysburg, PA 17325–7245. The report must include:

(1) A showing of how the system meets the benchmark; and

(2) A list, including addresses, of all component CTSs constructed.

[FR Doc. 96–579 Filed 1–18–96; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 61, No. 13
Friday, January 19, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–245–AD]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede two existing airworthiness directives (AD), applicable to Airbus Industrie Model A310 and A300–600 series airplanes. One AD currently requires repetitive operational tests of feel and limitation computers (FLC) 1 and 2; the other AD requires replacement of certain FLC's on Model A300–600 series airplanes. Those AD's were prompted by reports that the elevator control operated with stiffness. The actions specified by those AD's are intended to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which could adversely affect the controllability of the airplane. This action would require installation of new FLC's, which would terminate the currently required repetitive operational tests. This action also would revise the applicability of the rule to delete airplanes on which these new FLC's have been installed previously.

DATES: Comments must be received by February 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–245–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 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.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1503; 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 94–NM–245–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. 94–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 28, 1993, the FAA issued AD 93–24–51, amendment 39–8783 (59 FR 507, January 5, 1994), which is applicable to all Airbus Model A310 and A300–600 series airplanes. That AD requires repetitive operational tests of the Feel and Limitation Computers (FLC) 1 and 2. Any FLC that fails the operational test is required to be repaired or replaced in accordance with a method approved by the FAA. That AD was prompted by a report that the elevator control on a Model A300–600 series airplane operated with stiffness. The requirements of that AD are intended to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which could adversely affect controllability of the airplane.

Subsequent to the issuance of that AD, the FAA issued AD 94–09–16, amendment 39–8905 (59 FR 23133, May 5, 1994), applicable to certain Model A300–600 series airplanes. That AD requires the replacement of certain FLC's with FLC's that have been modified by an adjustment of the ''UNDERVOLTAGE DETECTION'' signal, which will preclude stiff operation of the elevator control. That AD was prompted by reports that the elevator control on several in-service airplanes operated with stiffness. The cause of the stiffness problem was found to be associated with spurious undervoltage detection in the FLC. The requirements of AD 94–09–16 are intended to prevent certain aspects of stiff operation of the elevator control and undetected loss of the rudder travel limitation function. Airplanes on which these modified FLC's were installed were still subject to the repetitive operational tests required by AD 93–24–51.

Since the issuance of those two AD's, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that the manufacturer has developed new modified FLC's for installation on Model A310 and A300–600 series airplanes that will positively address the unsafe condition associated with stiff operation of the elevator control.

Airbus Industrie has issued the following service bulletins:

1. Service Bulletin A310–27–2068, Revision 1, dated March 16, 1994, and

Revision 2, dated April 19, 1995, pertain to Model A310 series airplanes. These service bulletins describe procedures for installing Modification 10668, which entails a modification of the FLC to adjust the power supply monitoring. (The power supply is optimized in order to avoid stiff operation of the elevator due to a spurious undervoltage detection in the FLC's.)

2. Service Bulletin A310–27–2070, dated May 5, 1994, also pertains to Model A310 series airplanes. This service bulletin describes procedures for installing Modification 10712, which entails a modification of the FLC's to include improved fault detection, which is intended to avoid possible lack of warning when the undervoltage power supply detection is active. Accomplishment of this modification necessitates the simultaneous or previous accomplishment of Modification 10668.

3. Service Bulletin A300–27–6025, Revision 1, dated August 31, 1994, and Revision 2, dated April 19, 1995, pertain to Model A300–600 series airplanes. These service bulletins describe procedures for installing Modification 10667, which entails a modification of the FLC to adjust the power supply monitoring. The power supply is optimized in order to avoid stiff operation of the elevator due to a spurious undervoltage detection in the FLC's. (The original issue of this service bulletin, dated September 15, 1993, was referenced in AD 94–09–16 as the source for service instructions.)

4. Service Bulletin A300–27–6026, dated May 5, 1994, also pertains to Model A300–600 series airplanes. This service bulletin describes procedures for installing Modification 10713, which entails a modification of the FLC's to include improved fault detection, which is intended to avoid possible lack of warning when the undervoltage power supply detection is active. Accomplishment of this modification necessitates the simultaneous or previous accomplishment of Modification 10667.

The DGAC classified these service bulletins as mandatory and issued the following French airworthiness directives (CN) in order to assure the continued airworthiness of these airplanes in France:

1. CN 93–202–153(B)R1, dated August 3, 1994;

2. CN 94–046–156(B)R2, dated November 9, 1994; and

3. CN 95–202–188(B), dated October 11, 1995.

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 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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 proposed AD would supersede both AD 93–24–51 and AD 94–09–16. This new proposed AD would continue to require repetitive operational tests of the FLC's until new modified FLC's are installed. The installation would be required to be accomplished in accordance with the service bulletins described previously.

This proposed action also would revise the applicability of the rule to eliminate those airplanes on which the new modified FLC's have been installed previously.

Additionally, 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.

There are approximately 55 Airbus Model A300–600 and A310 series airplanes of U.S. registry that would be affected by this proposed AD.

The operational tests of the FLC's (which are currently required by AD 93–24–51 and would be retained in this AD) take approximately .5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the tests currently required is estimated to be $1,650, or $30 per airplane, per operational test.

Installation of the modified FLC's proposed in this AD action would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of this proposed installation is estimated to be $16,500, or $300 per airplane.

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

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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8783 (59 FR 507, January 5, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 94–NM–245–AD. Supersedes AD 93–24–51, amendment 39–8783, and AD 94–09–16, amendment 39–39–8905.

Applicability: Model A310 series airplanes on which Modifications 10712 and 10668 were not incorporated during production, or that are equipped with Feel and Limitation Computers (FLC) having the part numbers listed below; and Model A300–600 series airplanes on which Modifications 10713 and 10667 were not incorporated during production, or that are equipped with FLC's having the part numbers listed below; certificated in any category.

Airplane model	FLC part No.
A310	35–900–1008–009
	35–900–1009–011
	35–900–1011–011
	35–900–1011–011–A
A300–600	35–900–2000–200
	35–900–2000–201
	35–900–2002–201
	35–900–2002–201–A
	35–900–3002–302

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 (f)(1) 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 stiff operation of the elevator control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 7 days after January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), perform an operational test to verify proper operation of the Feel and Limitation Computers (FLC) 1 and 2, in accordance with Airbus Industrie All Operator Telex 27–14, dated November 2, 1993.

(1) If the operational test is successful, repeat the test at intervals not to exceed 7 days until the requirements of paragraph (c) or (d) of this AD, as applicable, are accomplished.

(2) If any FLC fails the operational test, prior to further flight, accomplish the procedures specified in either paragraph (c) or (d) of this AD, as applicable.

(b) Except as provided by paragraphs (c) and (d) of this AD: As of January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), no airplane shall be operated with an inoperative pitch feel system or inoperative pitch feel fault lights.

(c) For Model A310 series airplanes: Within 6 months after the effective date of this AD, replace or modify the currently installed FLC's in accordance with paragraphs (c)(1) and (c)(2) of this AD. Installation of FLC's that incorporate both Modifications 10668 and 10712 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Install Modification 10668 in accordance with Airbus Service Bulletin A310–27–2068, Revision 1, dated March 16, 1994, or Revision 2, dated April 19, 1995. And

(2) Install Modification 10712 in accordance with Airbus Service Bulletin A310–27–2070, dated May 5, 1994.

(d) For Model A300–600 series airplanes: Accomplish the requirements of paragraphs (d)(1), and (d)(2) of this AD. Accomplishment of these actions constitutes terminating action for the operational tests required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Within 45 days after May 20, 1994 (the effective date of AD 94–09–16, amendment 39–8905), replace the FLC's, having part number (P/N) 35–900–2000–200 or 35–900–2000–201, serial numbers 755 and subsequent, with an FLC that has been previously modified, in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993, or Revision 1, dated August 31, 1994.

(2) Within 6 months after the effective date of this AD, replace or modify the FLC's in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Installation of FLC's that incorporate both Modifications 10667 and 10713 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(i) Install Modification 10667 in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993; or Revision 1, dated August 31, 1994; or Revision 2, dated August 19, 1995. And

(ii) Install Modification 10713 in accordance with Airbus Service Bulletin A300–27–6026, dated May 5, 1994.

Note 2: The accomplishment of paragraph (d)(1) of this AD entails installing FLC's that incorporate Modification 10667, as does the accomplishment of paragraph (d)(2)(i). Paragraph (d)(2)(i) is included in this AD because the list of part numbers of affected FLC's in paragraph (d)(1), as well as in the parallel requirement of AD 94–09–16, is not comprehensive. Additional affected FLC part numbers were identified subsequent to the issuance of AD 94–09–16; FLC's having those part numbers are subject to the requirements of paragraph (d)(2) of this AD.

(e) As of the effective date of this AD, operational tests in accordance with paragraph (a) of this AD may be discontinued on modified FLC's having the part numbers listed in Table 1 of this AD.

TABLE 1

Airplane model	FLC part No.
A310	35–900–1010–011
	35–900–1012–011
	35–900–1012–011–A
A300–600	35–900–3004–302
	35–900–2001–201
	35–900–2003–201
	35–900–2003–201–A

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(2) Alternative methods of compliance, approved in accordance with AD 93–24–51, amendment 398783; or AD 94–09–16, amendment 39–8905, are approved as alternative methods of compliance with this AD.

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

Issued in Renton, Washington, on January 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–490 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–138–AD]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With Air Cruisers Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires modification of the packing and slide containers of the escape slide, and repetitive inspections of the velcro girt retaining straps at the forward door of the escape slides. The existing AD's were prompted by reports of slide girt material interfering with the girt bar stowage brackets during door opening. This action would require a new terminating modification, which would constitute terminating action for the repetitive inspection requirements. The actions specified by the proposed AD are intended to prevent failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by March 11, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–138–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180; and Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–138–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–138–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On March 21, 1988, the FAA issued AD 88–07–07, amendment 39–5884 (53 FR 9864, March 28, 1988), applicable to certain Boeing Model 737–300 series airplanes, to require modification of the packing and slide containers of the escape slide. (This modification has been accomplished on Model 737–400 and –500 series airplanes during production, in accordance with Production Revision Report 34388.) That action was prompted by reports of slide girt material interfering with the girt bar stowage brackets during door opening, arresting the door opening motion. The requirements of that AD are intended to prevent failure or interference of opening of the forward doors during an emergency evacuation.

On October 31, 1991, the FAA issued AD 91–24–04, amendment 39–8090 (56 FR 57588, November 13, 1991), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, equipped with certain Air Cruisers forward door escape slides that had been modified in accordance with AD 88–07–07. That AD requires repetitive inspections of the velcro girt retaining straps at the forward door escape slides. That action was prompted by reports of incorrectly routed and unserviceable slides or jammed doors during an emergency evacuation. The requirements of that AD are intended to prevent a jammed door or an escape slide deployed in an unusable position during an emergency evacuation.

Since the issuance of those AD's, the FAA has reviewed and approved Air Cruisers Company Service Bulletin S.B. 103–25–19, dated March 25, 1992, which describes procedures for modification of the escape slide girts. This modification involves removing the existing girt; bonding on the girt attachments; installing a detachable girt; rigging a painter/mooring line; and bonding a placard to slide assembly and reidentifying it. This modification will improve the operation of the escape slide of the forward entry and service doors. Accomplishment of this modification eliminates the need for the repetitive inspections of the velcro girt retaining straps at the forward door escape slides (currently required by AD 91–24–04). Further, the FAA finds that accomplishment of this modification will positively address the unsafe condition addressed by the two existing AD's.

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 88–07–07 to continue to require modification of the escape slide packing and slide containers. The proposed AD would also supersede AD 91–24–04 to continue to require repetitive inspections of the velcro girt retaining straps at the forward door of the escape slides. Additionally, the proposed AD would require modification of the escape slide girts, which would constitute terminating action for the repetitive inspection requirements.

The FAA has determined that long term continued operational safety will be better assured by modification or design change to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

There are approximately 1,572 Model 737–300, –400, and –500 series airplanes, equipped with Air Cruisers forward door escape slide of the affected design in the worldwide fleet. The FAA estimates that 663 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 88–07–07 take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $76 per airplane. Based on these figures, the cost impact on U.S. operators (175 airplanes) of the actions currently required is estimated to be $107,800, or $616 per airplane.

The actions that are currently required by AD 91–24–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators (439 airplanes) of the actions currently required is estimated to be $26,340, or $60 per airplane, per inspection cycle.

The modification that is proposed in this new AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,800 per airplane. Based on these figures, the cost impact on U.S. operators of the new proposed modification requirements of this AD is estimated to be $1,432,080, or $2,160 per airplane.

The 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.

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 amendments 39–5884 (53 FR 9864, March 28, 1988) and 39–8090 (56 FR 57588, November 13, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–138–AD. Supersedes AD 88–07–07, amendment 39–5884; and AD 91–24–04, amendment 39–8090.

Applicability: Model 737–300, -400, and -500 series airplanes, line numbers up to and including 2211; equipped with Air Cruisers forward door escape slides as listed in Air Cruisers Company Service Bulletin S.B. 103–25–19, dated March 25, 1992; 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 failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 30 days after December 17, 1991 (the effective date of 91–24–04, amendment 39–8090), establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD; and thereafter, comply with those procedures until the modification required by paragraph (c) of this AD is accomplished. The procedures required by paragraphs (a)(1) and (a)(2) of this AD must be accomplished by qualified and trained mechanics. The procedures required by paragraph (a)(3) may be accomplished by qualified and trained members of the flightcrew or cabin crew. The training program to implement the procedures required by this paragraph must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to the next flight after December 17, 1991 (the effective date of AD 91–24–04, amendment 39–8090), and thereafter at intervals not to exceed 200 flight hours, inspect the condition of the girt retaining straps at the forward doors.

(2) Prior to further flight after December 17, 1991 (the effective date of 91–24–04, amendment 39–8090), replace worn or aged velcro whose grip strength will no longer hold the girt retaining straps in position.

(3) Prior to the next flight after December 17, 1991 (the effective date of 91–24–04, amendment 39–8090), and thereafter prior to each flight, inspect the routing of the girt retaining straps at the forward doors, and reroute straps that are found not to be routed in accordance with the placarded instructions installed in accordance with AD 88–07–07, amendment 39–5885, on the inboard face of the slide compartment.

(b) For Model 737–300 series airplanes: Within 6 months after May 9, 1988 (the effective date of AD 88–07–07, amendment 39–5885), modify the escape slide packing and slide containers in accordance with Boeing Alert Service Bulletin 737–25A1221, dated December 17, 1987, or Revision 1, dated June 2, 1988. This modification must be accomplished prior to or in conjunction with accomplishment of the requirements of paragraph (c) of this AD.

(c) Within 36 months after the effective date of this AD, modify the escape slide girts in accordance with Air Cruisers Company Service Bulletin S.B. 103–25–19, dated March 25, 1992. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

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

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

(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 January 5, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–474 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–164–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require installation of reinforcement plates under each hook latch fitting on the frame of each large cargo door. For some airplanes, this proposal would require inspection to detect cracking in the area around each hook latch fitting, and repair, if necessary. This proposal is prompted by the results of stress analyses and destructive tests which revealed that fatigue-related cracking may develop in the vicinity of the hook latch fittings on the frame of the large cargo doors. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the frames of the cargo door due to fatigue cracking, which may lead to the cargo door(s) opening while the airplane is in flight.

DATES: Comments must be received by February 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–164–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; 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–164–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–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that the results of stress analyses and destructive tests on the frames of Model F28 Mark 0100 large cargo doors have shown that fatigue-related cracking may develop in the area of the hook latch fittings. Test data have shown that such cracking is most likely to develop after 11,000 flight cycles. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the frames of the large cargo door, which may lead to the cargo door(s) opening while the airplane is in flight.

Fokker has issued Service Bulletin SBF100–52–050, Revision 1, dated September 14, 1994, which describes procedures for installing reinforcement plates under each hook latch fitting on the frame of each large cargo door. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94–157 (A), dated November 24, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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, the proposed AD would require installation of two reinforcement plates under each hook latch fitting on the frame of each large cargo door. The installation would be required to be accomplished in accordance with the service bulletin described previously.

This AD also proposes to require, for certain airplanes, an inspection to detect cracking in the area around each hook latch fitting on the frame of each large cargo door and repair of any cracking found, in accordance with a method approved by the FAA.

The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4.5 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,000 per airplane. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $1,027,000, or $10,270 per airplane.

The FAA estimates that it would take approximately 4.5 work hours per airplane to accomplish the proposed inspection (that is required for certain airplanes), and that the average labor

rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $270 per airplane.

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

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), 40113, 44701.

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–164–AD.

Applicability: Model F28 Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–52–050, Revision 1, dated September 14, 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 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) 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 reduced structural integrity of the frame of the large cargo door, which may lead to the cargo door(s) opening while the airplane is in flight, accomplish the following:

(a) Prior to the accumulation of 11,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later, install two reinforcement plates under each hook latch fitting on the frame of each large cargo door, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–050, Revision 1, dated September 14, 1994.

(b) For airplanes that have accumulated 11,000 or more total flight cycles at the time of compliance with paragraph (a) of this AD: Concurrent with the accomplishment of the requirements of paragraph (a) of this AD, perform an inspection to detect cracking in the area around each hook latch fitting on the frame of each large cargo door, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

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

(2) If any cracking is detected, prior to completing the requirements of paragraph (a) of this AD, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(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. 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.

Issued in Renton, Washington, on January 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–492 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–79–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. The proposed action would require repetitively inspecting the spigot housing plate for cracks at the wing/fuselage forward attachment sliding joint, replacing any cracked housing plate, repetitively inspecting the spigots and spigot posts for corrosion and installing improved spigots if corrosion is found, and eventually installing improved spigots if corrosion is not found. For certain affected airplanes, the proposed action would require repetitively inspecting the spigot bushes for migration gaps, replacing the bushes with modified bushes if gaps are found that exceed 0.5-inch, and eventually replacing the bushes with modified bushes if migration gaps are not found. Reports of bush migration gaps found on three of the affected airplanes and another report of corrosion and several cracks found on the spigot housing plate on a Jetstream Model 3101 airplane prompted the proposed action. The actions specified by the proposed AD are intended to prevent structural failure of the wing/fuselage area caused by a cracked or corroded spigot housing assembly.

DATES: Comments must be received on or before March 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–79–AD, Room 1558, 601 E. 12th Street,

Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–79–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–79–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of bush migration gaps found on three JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. Another report references corrosion and several cracks found on the spigot housing plate on a Jetstream Model 3101 airplane.

In addition, fatigue testing on a JAL Jetstream Model 3201 airplane that revealed a crack in the spigot housing plate and damage to the spigot recently prompted the FAA to initiate proposed AD action on the Jetstream Model 3201 airplanes. The FAA issued a notice of proposed rulemaking (NPRM) that would require inspecting the spigot housing plate at the wing/fuselage forward attachment sliding joint, replacing any cracked or corroded part, and eventually replacing the spigots and spigot housing plate with new parts of improved design. The JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes are of a similar design to the JAL Jetstream Model 3201 airplanes.

JAL has issued the following service bulletins that apply to HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes:

—BAe Jetstream Alert Service Bulletin (ASB) 57–A–JA 920640, dated February 19, 1993, which specifies procedures for inspecting the wing/fuselage forward attachment spigot bushings for migration gaps;

—Jetstream Service Bulletin (SB) 57–JA 930941, Revision 2, dated November 11, 1994, which specifies procedures for inspecting the spigot housing plate at the wing/fuselage forward attachment sliding joint;

—BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993, which specify procedures for incorporating modified bushes at the wing/fuselage forward attachment spigots on certain airplanes; and

—Jetstream SB 57–JM 5326, dated September 3, 1993, which specifies procedures for incorporating new modified spigots at the wing/fuselage forward attachment fittings.

After examining all available information related to this situation, the FAA has determined that AD action should be taken on JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes to prevent structural failure of the wing/fuselage area caused by a cracked spigot housing plate.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes of the same type design, the proposed action would require repetitively inspecting the spigot housing plate for cracks at the wing/fuselage forward attachment sliding joint, replacing any cracked housing plate, repetitively inspecting the spigots and spigot posts for corrosion and installing improved spigots if corrosion is found, and eventually installing improved spigots if corrosion is not found. For certain affected airplanes, the proposed action would require repetitively inspecting the spigot bushes for migration gaps, replacing the bushes with modified bushes if gaps are found that exceed 0.5-inch, and eventually replacing the bushes with modified bushes if migration gaps are not found. The proposed actions would be accomplished in accordance with the service bulletins previously referenced.

The alternative to incorporating new modified spigots and bushes would be to require repetitive inspections. FAA aging commuter-class aircraft policy states that reliance on critical repetitive inspections carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Therefore, the proposed spigot and bush replacements, if incorporated in a final rule, would be consistent with the FAA's commuter-class aircraft policy.

The compliance time of the proposed repetitive inspections of the spigots and spigot posts for corrosion is presented in calendar time instead of hours time-in-service (TIS). Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

The FAA estimates that 143 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 61 workhours per airplane to accomplish the proposed inspections and modifications, and that

the average labor rate is approximately $60 an hour. Parts cost approximately $320 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $569,140 or $3,980 per airplane. This figure only takes into account the cost of initial inspections and does not take into account repetitive inspection costs. The FAA has no way of determining the number of repetitive inspections each affected airplane owner/operator will incur over the life of the airplane.

The approximately 61 workhours it would take to accomplish the proposed actions is based on each proposed inspection and modification being accomplished separately. The FAA anticipates that many owners/operators of the affected airplanes will schedule all of the proposed actions to be accomplished at the same time, thereby reducing the labor costs associated with accomplishing these proposed actions.

In addition, Jetstream Aircraft Limited has informed the FAA that parts have been distributed to equip approximately 40 airplanes. Assuming that each kit sold is installed on an affected HP137 Mk1, Jetstream series 200, or Jetstream Model 3101 airplane, the proposed cost impact upon U.S. operators would be reduced $159,200 from $569,140 to $409,940.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–79–AD.

Applicability: HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes (all serial numbers), certificated in any category.

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

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 (g) 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.

To prevent structural failure of the wing/fuselage area caused by a cracked spigot housing assembly, accomplish the following:

(a) For all affected airplanes, upon the accumulation of 7,200 hours time-in-service (TIS) or within the next 1,200 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 7,200 hours TIS, accomplish the following:

(1) Inspect the spigot housing plate at the wing/fuselage forward attachment sliding joint for cracks in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–JA 930941, Revision No. 2, dated November 11, 1994.

(2) If a cracked spigot housing plate is found, prior to further flight, replace the cracked spigot housing plate in accordance with Part 3 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(3) Replacing the spigot housing plate does not eliminate the 7,200-hour TIS interval repetitive inspection requirement.

(b) For all affected airplanes, within the next 12 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months until Modification No. JM 5326 and Modification No. JM 5259 (as applicable) are incorporated as required by paragraphs (d)(1) and (d)(2) of this AD, inspect the spigots and spigot posts for corrosion in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(1) If corrosion damage is found that is 0.06 inch (1.52 mm) or less deep and does not extend to within 0.9 inch (22.9 mm) from either end of the bore, prior to further flight, treat the corrosion in accordance with paragraph (8)(d) of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(2) If corrosion damage is found that is more than 0.06 inch (1.52 mm) or extends to within 0.9 inch (22.9 mm) from either end of the bore, prior to further flight, obtain a repair scheme from the manufacturer through the Brussels Aircraft Certification Office (ACO) at the address specified in paragraph (g) of this AD, and incorporate this repair scheme.

(c) For all affected HP137 Mk1 airplanes and all affected Jetstream series 200 airplanes, and Jetstream Model 3101 airplanes with a serial number in the range of 601 through 702 (inclusive), within the next 1,200 hours TIS after the effective date of this AD, inspect the wing/fuselage forward attachment spigot bushes for migration gaps in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream Alert SB 57–A–JA 920640, dated February 19, 1993.

(1) If no migration gaps are found, reinspect at intervals not to exceed 4,500 hours TIS until Modification No. JM 5259 is incorporated. If migration gaps are found upon reinspection, install modified bushes as specified in paragraph (c)(2) or (c)(3) of this AD.

(2) If migration gaps are found that are .5 inch or less, reinspect at intervals not to exceed 900 hours TIS until Modification No. JM 5259 is incorporated. If migration gaps are found upon reinspection that are larger than .5 inch, accomplish paragraph (c)(3) of this AD, as applicable.

(3) If migration gaps are found that are larger than .5 inch, within 150 hours TIS after the last inspection required by paragraph (c)(1) or (c)(2) of this AD, install modified bushes at the wing/fuselage forward attachment spigots (Modification JM 5259) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993.

(d) Upon accumulating 25,000 hours TIS or within 1,000 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) For all affected HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes, replace both wing/fuselage spigots with new modified spigots (Modification No. JM 5326) in accordance with Jetstream SB 57–JM 5326, dated September 3, 1993; and

(2) For all affected HP137 Mk1 airplanes and all affected Jetstream series 200

airplanes, and Jetstream Model 3101 airplanes with a serial number in the range of 601 through 702 (inclusive), install modified bushes at the wing/fuselage forward attachment spigots (Modification No. JM 5259) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993.

(3) Incorporating Modification No. JM 5259 eliminates the requirement of repetitively inspecting the wing/fuselage forward attachment spigot bushes for migration gaps as required by all designations of paragraph (c) of this AD.

(e) Incorporating both Modification No. JM 5326 and Modification No. JM 5259 eliminates the repetitive inspections required by all designations of paragraphs (b) and (c) of this AD. This does not eliminate the repetitive inspections of the spigot housing plate as required by paragraph (a) of this AD.

(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) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels ACO, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(h) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 5, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–484 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–34–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required inspecting the spigot housing plate at the wing/fuselage forward attachment sliding joint on certain Jetstream Aircraft Limited (JAL) Model 3201 airplanes, replacing any cracked or corroded part, and eventually replacing the spigots and spigot housing plate with new parts of improved design. A crack in the spigot housing plate assembly found during fatigue testing of the affected airplanes prompted the proposed action. Since publication of that proposal, the Federal Aviation Administration (FAA) has determined that the proposed action is still a valid safety issue, but should be accomplished in accordance with updated service information. The proposed action revises the previous proposal by referencing an updated service bulletin. The actions specified by the proposed AD are intended to prevent structural failure of the wing/fuselage area caused by a cracked spigot housing assembly. Since the comment period for the original proposal has closed and the proposed action goes beyond the scope of what was originally proposed, the FAA is allowing additional time for the public to comment.

DATES: Comments must be received on or before March 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508–2715; facsimile (322) 230–6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 93–CE–34–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRMs

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Jetstream Aircraft Limited (JAL) Jetstream Model 3201 airplanes was published in the Federal Register on July 20, 1993 (58 FR 38732). The action proposed to require inspecting the spigot housing plate at the wing/fuselage forward attachment sliding joint, replacing any cracked or corroded part, and eventually replacing the spigots and spigot housing plate with new parts of improved design. The proposal would have been accomplished in accordance with Jetstream Service Bulletin (SB) 57–JA 921144, dated March 4, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposed rule and no comments were received concerning the FAA's determination of the cost to the public.

JAL has revised SB No. 57–JA 921144 to the Revision 1 level (dated April 19, 1994). This revision amends the installation instructions for the new spigot housing plates to account for possible misalignment of attachment holes, which could lead to elongation.

Since publication of the proposal, the FAA has re- examined various service difficulty reports on the affected airplanes, determined that the proposed modification is still a valid safety issue (but not considered an urgent safety of flight issue), and determined that the proposed action should be accomplished in accordance with the above-referenced revised service bulletin. Since the comment period for the original proposal has closed and the installation instructions in the service bulletin have been amended, the FAA is reopening the comment period to provide additional time for public comment.

The alternative to incorporating a new modified spigot and spigot housing plate would be to require repetitive inspections. FAA aging commuter-class aircraft policy states that reliance on critical repetitive inspections carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Therefore, the proposed action, if incorporated as a final rule, would be consistent with the FAA's aging commuter-class aircraft policy.

The FAA estimates that 120 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 23 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $165,600. These figures take into account that none of the affected airplanes have the proposed modification incorporated.

Jetstream Aircraft Limited has informed the FAA that parts have been distributed to equip approximately 30 airplanes (approximately 25 percent of the fleet in the U.S. registry). Assuming that each set of parts is installed on an affected Jetstream Model 3201 airplane, the proposed cost impact upon U.S. operators would be further reduced $41,400 from $165,600 to $124,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Jetstream Aircraft Limited: Docket No. 93–CE–34–AD.

Applicability: Jetstream Model 3201 airplanes (serial numbers 790 through 960), certificated in any category.

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

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural failure of the wing/fuselage area caused by a cracked spigot housing assembly, accomplish the following:

(a) Upon the accumulation of 7,200 hours time-in-service (TIS) or within the next 500 hours TIS after the effective date of this AD, whichever occurs later, inspect the spigot housing plate at the wing/fuselage forward attachment sliding joint for corrosion or cracks. Accomplish this inspection in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–JA 921144, Revision 1, dated April 19, 1994.

(1) If any corrosion or cracks are found, prior to further flight, modify the spigot and spigot housing plate in accordance with either Part 2 or Part 3, as applicable, of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 921144, Revision 1, dated April 19, 1994.

(2) If no corrosion or cracks are found, within the next 3,000 hours TIS after the inspection required by paragraph (a) of this AD, modify the spigot and spigot housing plate in accordance with either Part 2 or Part 3, as applicable, of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 921144, Revision 1, dated April 19, 1994.

(b) Accomplishing the inspection required by this AD in accordance with the original issue of Jetstream SB 57–JA 921144, dated March 4, 1993, is considered already accomplished for that particular portion of this AD.

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

(d) An alternative method of compliance or adjustment of the compliance time that

provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(e) All persons affected by this action may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 4, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–489 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–159–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 series airplanes. This proposal would require modification of the existing diaphragms on the surround structure of the Type II emergency exit. This proposal is prompted by a report that, during fatigue tests on a Model 4101 test article, cracking was found in the surround structure of a Type II emergency exit due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent fatigue-related cracking in the surround structure of the Type II emergency exit, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Comments must be received by February 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–159–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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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) 227–2141; 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–159–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–159–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

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 certain Jetstream Model 4101 airplanes. The CAA has received a report indicating that, during fatigue tests on a Model 4101 test article, cracking was found in the surround structure of a Type II emergency exit. Such cracking is attributed to fatigue-related stress. Fatigue- related cracking in the surround structure of the type II emergency exit, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage pressure vessel.

Jetstream has issued Service Bulletin J41–53–014, dated July 24, 1995, which describes procedures for modification of the existing diaphragms on the surround structure of the Type II emergency exit. The modification involves removing the existing integral flange from ten diaphragms located forward and aft of the Type II exit door frame and adding an aluminum machined cleat at each location. Accomplishment of the modification will prevent fatigue-related cracking and restore the fatigue life of the surround structure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the existing diaphragms on the surround structure of the Type II emergency exit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 61 Jetstream Model 4101 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 35 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $73,500, or $2,100 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Jetstream Aircraft Limited: Docket 95–NM–159–AD.

Applicability: Model 4101 airplanes, serial numbers 41004 through 41064 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 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 fatigue-related cracking in the surround structure of the type II emergency exit, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Prior to the accumulation of 7,200 total landings, or within 1,400 landings after the effective date of this AD, whichever occurs later, modify the existing diaphragms on the surround structure of the Type II emergency exit in accordance with the Jetstream Service Bulletin J41–53–014, dated July 24, 1995.

(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.

Issued in Renton, Washington, on January 11, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–573 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–145–AD]

Airworthiness Directives; McDonnell Douglas DC–9 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9 series airplanes. This proposal would require inspection(s) to detect cracking in the nose skin of the fuselage, and various follow-on actions. The proposal would also provide an optional modification, which would defer certain repetitive inspections, if no cracking is detected. This proposal is prompted by reports of cracking in the upper nose skin of the fuselage due to fatigue. The actions specified by the proposed AD are intended to prevent fatigue-related cracking, which could compromise the structural integrity of the airplane.

DATES: Comments must be received by March 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–145–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.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; 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–145–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–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 20, 1994, the FAA issued AD 94–03–01, amendment 39–8807 (59 FR 6538, February 11, 1994), which is applicable to McDonnell Douglas DC–9 series airplanes and C–9 (military) airplanes. That AD requires implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. AD 94–03–01 includes a requirement to inspect the upper nose skin of the fuselage under the fleet leader operator sampling criteria. McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' which is referenced in that AD as the appropriate source of service information, designates this area of the airplane as Principal Structural Element (PSE) 53.09.29 (left side) and 53.09.30 (right side). The fatigue life threshold (N_{th}) for the upper nose skin is 113,592 total landings. The sampling period for this PSE started in August 1988, and will end on March 19, 1998. Sampling inspections are to be performed on airplanes in the candidate fleet that have accumulated more than 56,796 total landings (which is $N_{th}/2$).

Since issuance of that AD, the FAA has received reports of cracking in the upper nose skin of the fuselage on Model DC–9 series airplanes. A preload condition was discovered on some of these airplanes. These airplanes had accumulated between 47,000 and 92,000 total landings. Investigation revealed that the cause of such cracking has been attributed to fatigue. Fatigue-related cracking, if not detected and corrected in a timely manner, could compromise the structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994, which describes the following procedures:

1. High frequency eddy current (HFEC) inspection(s) to detect cracking in the nose skin of the fuselage;
2. An optional modification of the upper nose skin of the cockpit fuselage, if no cracking is detected, which would defer the repetitive inspections; and
3. Repair of the cracked nose skin, if any cracking is detected within the repair limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require HFEC inspection(s) to detect cracking in the nose skin of the fuselage. All airplanes would be required to be inspected initially prior to the accumulation of 40,000 total landings or within 3,000 landings after the effective date of the final rule, whichever occurs later. If no cracking is detected as a result of this inspection, operators may either:

1. Repeat the inspection at intervals not to exceed 4,000 landings; or
2. Install a modification of the upper nose skin of the cockpit fuselage, after which a visual inspection to detect cracking would be required prior to the accumulation of 60,000 landings after the accomplishment of the modification. The visual inspection would be repeated at intervals not to exceed 25,000 landings.

If any cracking is detected as a result of the initial HFEC inspection and the cracking is within certain repair limits, the cracking must be repaired and the repair visually inspected prior to the accumulation of 60,000 landings since accomplishment of the repair, in accordance with a method approved by the FAA.

If any cracking is detected a a result of the initial HFEC inspection and the cracking is outside of certain repair limits, the crack must be repaired in accordance with a method approved by the FAA.

The HFEC inspections, certain repairs, and modification procedures would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 889 Model DC–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 568 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $340,800, or $600 per airplane, per inspection.

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

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), 40113, 44701.

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95–NM–145–AD.

Applicability: All Model DC–9–10, –20, –30, –40, –50, and C–9 (military) 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 (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 fatigue-related cracking, which could compromise the structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 40,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking in the nose skin of the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994.

(1) If no cracking is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, in accordance with the service bulletin.

(i) Repeat the HFEC inspection thereafter at intervals not to exceed 4,000 landings; or

(ii) Accomplish the modification of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this modification, perform a visual inspection of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 25,000 landings.

(2) If any cracking is detected and it is within the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this repair, perform a visual inspection to detect cracking of the repair; and prior to further flight, repair any cracking found during this inspection; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any cracking is detected and it is beyond the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with a method approved by the Manager, Los Angeles ACO.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on January 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–491 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 90–CE–61–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31T, PA31T1, PA31T2, and PA31T3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 84–08–06, which currently requires the following on certain The New Piper Aircraft, Inc. (Piper) Models PA31T, PA31T1, PA31T2, and PA31T3 airplanes: repetitively inspecting the fuselage station (FS) 332 bulkhead for cracks, and reinforcing or replacing the FS 332 bulkhead if cracks are found. 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. The proposed action would retain the current repetitive inspections contained in AD 84–08–06, and would require incorporating a stabilizer forward spar attachment bulkhead reinforcement kit or installing a reinforced bulkhead assembly as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent structural failure of the horizontal stabilizer and the aft fuselage attachment caused by cracks in the FS 332 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before March 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–61–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 84–08–06, Amendment 39–4851, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 84–08–06 currently requires the following on Piper Models PA31T, PA31T1, PA31T2, and PA31T3 airplanes:

—Repetitively inspecting the fuselage station (FS) 332 bulkhead for cracks, reinforcing the FS 332 bulkhead (Piper Kit 764–983) if all cracks found do not exceed certain limits, and replacing the bulkhead assembly with a reinforced replacement bulkhead assembly (part number 45583–16 or 45583–17) if any crack is found that exceeds certain limits. Accomplishment of the inspections required by AD 84–08–06 is in accordance with Piper Service Bulletin (SB) No. 773, dated December 19, 1983; and

—Allowing for the provision of incorporating Piper Kit 764–983 or part number 45583–16 or 45583–17 bulkhead assembly as terminating action for the repetitive inspection requirement. The incorporation of Piper Kit 764–983 is accomplished in accordance with the instructions provided with the kit, and the reinforced bulkhead assembly installations are accomplished in accordance with the applicable maintenance manual.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 84–08–06, and to prevent structural failure of the horizontal stabilizer and the aft fuselage attachment caused by cracks in the FS 332 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31T, PA31T1, PA31T2, and PA31T3 airplanes of the same type design, the proposed AD would supersede AD 84–08–06 with a new AD that would (1) retain the requirement of repetitively inspecting the FS 332 bulkhead for cracks, reinforcing the FS 332 bulkhead (Piper Kit 764–983) if any crack is found that does not exceed certain limits, and replacing the bulkhead assembly with a reinforced bulkhead assembly (part number 45583–16 or 45583–17) if any crack is found that exceeds certain limits; and (2) require incorporating a stabilizer forward spar attachment bulkhead reinforcement (Piper Kit 764–983) or a reinforced bulkhead assembly (part number 45583–16 or 45583–17) as terminating action for the repetitive inspections. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 773A, dated May 3, 1984. The incorporation of Piper Kit 764–983 would be accomplished in accordance with the instructions to this kit (Revised June 18, 1990), and the reinforced bulkhead installations would be accomplished in accordance with the applicable maintenance manual.

The FAA estimates that 736 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 60 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $782 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,225,152 or $4,382 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that parts have been distributed to enough owners/operators to equip 348 of the affected airplanes. Assuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $1,524,936 from $3,225,152 to $1,700,216.

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. The FAA believes that a large number of the remaining 388 affected airplanes (736 affected airplanes—348 sets of parts distributed) that would be affected by the proposed modification AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD allows 600 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within four to six months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow three to six years before the proposed modification would be mandatory.

The FAA established the 600 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues looked at in this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators

''within the next 600 hours TIS after the effective date of this AD.'' The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper Models PA31T, PA31T1, PA31T2, and PA31T3 airplanes (such as 5,000 hours TIS) would impose the undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about six years to allow low-usage airplanes time to accumulate the 600 hours after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31T, PA31T1, PA31T2, and PA31T3 airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 84–08–06, Amendment 39–4851, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–61–AD. Supersedes AD 84–08–06, Amendment 39–4851.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have either Piper Kit 764–983 (stabilizer forward spar attachment bulkhead reinforcement) incorporated at Fuselage Station (FS) 332 or have a part number (P/N) 45583–16 or P/N 45583–17 bulkhead assembly installed:

Models	Serial No.
PA31T .	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8104101, 31T–8304003, and 31T–1104004 through 31T–1104007.
PA31T2	31T–8166001 through 31T–8166032, 31T–8166034 through 31T–8166065, 31T–8166067 through 31T–8166071, and 31T–8166073 through 31T–8166075.
PA31T3	31T–8275001, 31T–8275003 through 31T–8275012, 31T–8275014 through 31T–8275017, 31T–8275025, and 31T–8375001 through 31T–8375005.

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 (h) 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 structural failure of the horizontal stabilizer and the aft fuselage attachment caused by cracks in the FS 332 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 84–08–06), and thereafter at intervals not to exceed 200 hours TIS until the modification required by paragraph (c), (d), or (e) of this AD is incorporated, inspect (using dye penetrant methods) the FS 332 bulkhead for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 773A, dated May 3, 1984.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD and no crack exceeds the limitations specified in Piper SB No. 773A, dated May 3, 1984, prior to further flight, repair the cracks in accordance with Piper SB No. 773A, dated May 3, 1984, and reinforce the FS 332 bulkhead by incorporating Piper Kit 764–983 in accordance with the instructions to Piper Kit 764–983, Revised June 18, 1990.

(d) If cracks are found during any of the inspections required in paragraph (a) of this AD and any crack exceeds the limitations specified in Piper SB No. 773A, dated May 3, 1984, prior to further flight, replace the bulkhead assembly with a reinforced bulkhead assembly, P/N 45583–16 or P/N 45583–17. Accomplish this replacement in accordance with the applicable maintenance manual.

(e) Upon the accomplishment of the third repetitive inspection required by this AD (600 hours TIS after the effective date of this AD), unless already accomplished as required by paragraph (c) or (d) of this AD, accomplish one of the following, as applicable:

(1) If cracks are found and no crack exceeds the limitations specified in Piper SB No. 773A, dated May 3, 1984, repair the cracks in accordance with Piper SB No. 773A, dated May 3, 1984, and reinforce the FS 332 bulkhead by incorporating Piper Kit 764–983 in accordance with the instructions to Piper Kit 764–983, Revised June 18, 1990;

(2) If cracks are found and any crack exceeds the limitations specified in Piper SB No. 773A, dated May 3, 1984, replace the bulkhead assembly with a reinforced bulkhead assembly, P/N 45583–16 or P/N 45583–17, in accordance with the applicable maintenance manual; or

(3) If no cracks are found, either reinforce the FS 332 bulkhead by incorporating Piper Kit 764–983 in accordance with the instructions to Piper Kit 764–983, Revised June 18, 1990; or replace the bulkhead assembly with a reinforced bulkhead assembly, P/N 45583–16 or P/N 45583–17, in accordance with the applicable maintenance manual.

(f) Incorporating Piper Kit 764–983 or installing reinforced bulkhead assembly, P/N 45583–16 or P/N 45583- 17, as required by paragraphs (c) and (d) or (e) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA 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.

Note 3: Alternative methods of compliance approved in accordance with AD 84–08–06 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(i) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(j) This amendment supersedes AD 84–08–06, Amendment 39–4851.

Issued in Kansas City, Missouri, on January 10, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–485 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–233–AD]

Airworthiness Directives; Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all transport category airplanes, that currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That AD also provides for an alternative action regarding the requirement to install specific placards at certain locations. That AD was prompted by fires occuring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The actions specified by that AD are intended to prevent such fires. This action would allow dispatch relief in the event a lavatory door ashtray is missing.

DATES: Comments must be received by March 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–233–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.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2113; 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–233–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–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 26, 1995, the FAA issued AD 74–08–09 R1, amendment 39–9214 (60 FR 21429, May 2, 1995), which is applicable to all transport category airplanes. That AD revised AD 74–08–09, which required installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. The revised AD continues to require those actions. Additionally, the revised AD provides for an alternative action regarding the requirement to install specific placards at certain locations. The original AD was prompted by fires occuring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The requirements of that AD are intended to prevent such fires.

Since the issuance of that AD, the Air Transport Association (ATA) of America, on behalf of its members, filed a petition for exemption from certain requirements of AD 74–08–09 R1. In its petition for exemption, the ATA requested that the FAA allow the external cabin lavatory door ashtrays to be removed or missing on air carrier airplanes on which smoking is prohibited or on flights during which smoking is prohibited. The FAA denied that petition on the basis of reports indicating that smoking still occurs on these flights. As an example, 66 violations of the smoking ban were recorded on air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121) between January 1, 1995, and August 17, 1995. Consequently, on October 19, 1995, the ATA filed a petition for reconsideration of the denial of its petition for exemption.

In support of its petition for reconsideration, the ATA states that

violations of the smoking ban should be put into perspective. The ATA points out that U.S. airlines carried over 300 million passengers and performed approximately 4.5 million departures during that period. Further, while the data presented by the FAA indicate that illegal infrequent smoking does occur, no supporting documentation was provided to explain the specific circumstances regarding these instances [for example, where the violations occurred (i.e., inside the cabin lavatory, in the passenger seat, or in the aisle), and what corrective action was taken by the flight attendants to remedy the situation]. The ATA contends that, without such information, these violations cannot be put into proper context or serve as the basis for denial of its petition for exemption.

The ATA adds that, although the FAA contends in its denial that the external cabin lavatory door ashtrays serve a safety function, the ATA believes the presence of those ashtrays serves as an open invitation for passengers to smoke in certain areas of the airplane. The ATA states that continuing to require the presence of a lavatory door ashtray is inexplicable in view of the FAA's approval of the removal of passenger seat ashtrays. The ATA considers that the required installation of smoke detectors and trash receptacle fire extinguishers provide effective safety measures with regard to the lavatory.

The ATA contends that the introduction of the domestic smoking ban and widespread compliance with that ban have made the requirement for a lavatory door ashtray unnecessary. The ATA indicates that this requirement has imposed unjustifiable flight delays and cancellations upon the travelling and shipping public. For example, one operator, which flies short segments, has experienced numerous delays and cancellations due to the requirement; yet, the operator has reported no passenger violations since the smoking ban was imposed. The ATA adds that the domestic smoking ban is well known among the travelling public. Further, pre-departure briefings given by flight attendants, seat back safety cards, continuously lit ''No Smoking'' placards, and the introduction of the smoking ban on international flights by some carriers all reinforce the smoking prohibition.

As an alternative to eliminating the requirement for an external lavatory door ashtray, the ATA suggests that the FAA develop policy to allow dispatch relief for operators in the event an ashtray is missing. The ATA believes that not allowing relief for AD-mandated systems is warranted in the majority of cases, but that it is apparent that application of that guideline is not justified in this case. The ATA states that the FAA defines passenger convenience items as ''those items related to passenger convenience, comfort or entertainment such as, but not limited to, galley equipment, movie equipment, ashtrays, stereo equipment, and overhead reading lamps, etc.'' (The ATA provides no citation for this definition.) The ATA adds that certain FAA orders specify that passenger convenience items do not have fixed repair intervals. The ATA concludes that the FAA has categorized the passenger seat ashtray as a passenger convenience item and the cabin lavatory door ashtray as a safety requirement (per AD 74–08–09 R1).

The FAA does not concur with the ATA's request to allow the external cabin lavatory door ashtrays to be removed or missing on air carrier airplanes on which smoking is prohibited or on flights during which smoking is prohibited. Although the FAA only cited 66 reports of smoking on air carriers on which smoking is banned or on flights during which smoking is prohibited, it is evident from these reports that smoking still occurs where prohibited. Such smoking could pose a fire hazard to the airplane. The FAA finds that installing smoke detectors and trash receptacle fire extinguishers, as discussed by the commenter, would only provide a means of detecting and extinguishing a fire. However, the intent of this proposed AD is to prevent a fire hazard from occurring. The FAA finds that the requirement for an ashtray on or near the lavatory door provides a disposal location for cigarettes (or other smoking materials), and thereby ensures there is a place to dispose of smoking material in the event the smoking ban is not adhered to. Additionally, the installation of a lavatory door ashtray ensures that uninformed persons who find themselves with lighted smoking materials on the airplane will have an obvious location to dispose of smoking material before entering the lavatory.

While the smoking ban is undoubtedly a positive feature that may contribute to safety, the FAA has determined that it does not present an acceptable level of safety equivalent to that addressed by the requirement for installation of an external lavatory door ashtray. Therefore, the FAA considers that requirement necessary to ensure adequate fire protection aboard transport category airplanes.

The FAA acknowledges that the Master Minimum Equipment List (MMEL) contains a definition of passenger convenience items that includes ashtrays among those items. However, the commenter's assertion that the FAA categorizes ashtrays as passenger convenience items is incorrect. The FAA intends to address this issue in an action apart from this proposed AD. Ashtrays, including passenger seat ashtrays, are required equipment on most airplanes. The FAA has made a finding that if certain additional conditions are met, the ashtrays may be removed from the seats; however, part of that finding is based on the requirement that external lavatory door ashtrays be installed.

However, in light of the economic burden the requirement for installation of a lavatory door ashtray may place on certain operators, the FAA finds that dispatch relief may be permitted for a period of 10 days, provided that no more than one lavatory door ashtray is missing from the airplane. For airplanes on which only one lavatory door ashtray is installed, dispatch relief may be permitted for a period of 3 days if the lavatory door ashtray is missing. Paragraph (d) has been included in this proposed rule to allow such dispatch relief.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 74–08–09 R1 to continue to require installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. This AD also would continue to provide for an alternative action regarding the requirement to install specific placards at certain locations. In addition, this AD would allow dispatch relief in the event a lavatory door ashtray is missing.

Since this action only provides for an alternative method of complying with an existing rule, it does not add any new additional economic burden on affected operators. The current costs associated with this proposed AD are reiterated below for the convenience of affected operators.

The costs associated with the currently required placard installations entail approximately 1 work hour per airplane, 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 the installation requirements of the

proposed AD on U.S. operators is estimated to be $60 per airplane.

The costs associated with the currently required inspections entail approximately 1.5 work hours per airplane per inspection, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of this proposed AD on U.S. operators is estimated to be $90 per airplane per inspection.

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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9214 (60 FR 21429, May 2, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Transport Category Aircraft: Docket 95–NM–233–AD. Revises AD 74–08–09 R1, Amendment 39–9214.

Applicability: All transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles.

Note 1: The following is a partial list of aircraft, some or all models of which are type certificated in the transport category and have lavatories equipped with paper or linen waste receptacles:

Aerospatiale Models ATR42 and ATR72 series airplanes;
Airbus Models A300, A310, A300–600, A320, A330, and A340 series airplanes;
Boeing Models 707, 720, 727, 737, 747, 757, and 767 series airplanes;
Boeing Model B–377 airplanes;
British Aircraft Models BAC 1–11 series, BAe–146 series, and ATP airplanes;
CASA Model C–212 series airplanes;
Convair Models CV–580, 600, 640, 880, and 990 series airplanes;
Convair Models 240, 340, and 440 series airplanes;
Curtiss-Wright Model CW 46;
de Havilland Models DHC–7 and DHC–8 series airplanes;
Fairchild Models F–27 and C–82 series airplanes;
Fairchild-Hiller Model FH–227 series airplanes;
Fokker Models F27 and F28 series airplanes;
Grumman Model G–159 series airplanes;
Gulfstream Model 1159 series airplanes;
Hawker Siddeley Model HS–748;
Jetstream Model 4101 airplanes;
Lockheed Models L–1011, L–188, L–1049, and 382 series airplanes;
Martin Model M–404 airplanes;
McDonnell Douglas Models DC–3, –4, –6, –7, –8, –9, and –10 series airplanes; Model MD–88 airplanes; and Model MD–11 series airplanes;
Nihon Model YS–11;
Saab Models SF340A and SAAB 340B series airplanes;
Short Brothers and Harlin Model SC–7 series airplanes;
Short Brothers Models SD3–30 and SD3–60 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles, accomplish the following:

(a) Within 60 days after August 6, 1974 (the effective date of AD 74–08–09, amendment 39–1917), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a placard either on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must either contain the legible words, ''No Smoking in Lavatory'' or ''No Smoking;'' or contain ''No Smoking'' symbology in lieu of words; or contain both wording and symbology; to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users. And

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating ''No Cigarette Disposal.''

(b) Within 30 days after August 6, 1974, establish a procedure that requires that no later than a time immediately after the ''No Smoking'' sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a ''No Smoking'' sign, the required procedure must provide that the announcement be made prior to each takeoff.

(c) Except as provided by paragraph (d) of this AD: Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(d) The airplane may be operated for a period of 10 days with a lavatory door ashtray missing, provided that no more than one such ashtray is missing. For airplanes on which only one lavatory door ashtray is installed, the airplane may be operated for a period of 3 days if the lavatory door ashtray is missing. This AD permits a lavatory ashtray to be missing, although the FAA-approved Master Minimum Equipment List (MMEL) may not allow such provision. In any case, the provisions of this AD prevail.

(e) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspections, accomplished the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (e)(1) of this AD.

(f) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000-hour repetitive inspection interval specified in paragraph (e) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

(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.

Issued in Renton, Washington, on January 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–493 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Chapter II

[Docket No. OST–96–993; Notice 96–1]

RIN 2105–AC36

Ticketless Travel: Passenger Notices

AGENCY: Office of the Secretary, DOT.

ACTION: Request for Comments.

SUMMARY: The Department is seeking comment on passenger notice requirements as applied to ticketless air travel. This action is taken on the Department's initiative.

DATES: Comments on the issues discussed in this document should be received by March 19, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. OST–96–993, Room PL–401, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide an original and three copies of their comments. Comments can be inspected from 9:00 a.m. to 5:00 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter. Comments should be on 8½ by 11 inch white paper using dark ink and should be without tabs and unbound.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, Department of Transportation, 400 Seventh Street SW, Room 10405, Washington, DC 20590, telephone (202) 366–5952.

SUPPLEMENTARY INFORMATION:

Background

Various DOT regulations require U.S. and foreign air carriers to provide consumer notices on or with passenger tickets. These notices provide information about protections afforded by federal regulations, limitations on carrier liability, and contract terms that passengers may not otherwise be aware of. These ticket notice requirements are listed below.

Subject/Source (14 CFR)

Oversales—§ 250.11
Domestic baggage liability—§ 254.5
International baggage liability—§ 221.176
Domestic contract of carriage terms—§ 253.5
Terms of electronic tariff (international)—§ 221.177(b)
Refund penalties (domestic)—§ 253.7
Fare increases (international)—§ 221.174
Death/injury liability limits (international)—§ 221.175

Over the past few years, a number of airlines have begun selling air service with ''ticketless travel,'' also known as ''electronic ticketing.'' Under this concept a passenger or travel agent calls the airline, makes a reservation and purchases the transportation during the call, typically by credit card. No ''ticket,'' as that document has traditionally been configured, is issued. Instead, the passenger is orally given a confirmation number and/or is sent a written itinerary. Upon checking in at the airport the passenger simply provides his or her name, furnishes identification, and is given a boarding pass or other document that is used to gain access to the aircraft.

The Department of Transportation supports the development of ticketless travel. The process has the potential to reduce carrier and agent costs, and thereby costs to consumers, and to make air transportation easier to purchase. At the same time, the Department has been concerned that necessary information in the passenger notices described above be provided to all passengers in a ticketless environment at a time and in a manner that makes the information useful. A number of carriers that offer ticketless travel have approached the Department and asked what procedures we would find to be acceptable in this area. In response, we have pointed out the importance of providing the same general level and timeliness of notice that is presently required for traditionally-ticketed passengers, as indicated in the discussion that follows. As far as we are aware, virtually all carriers that offer ticketless travel are providing those notices in the manner and at the time that we have recommended.

We realize that this is a dynamic area of air transportation. We are publishing this Federal Register notice in order to seek comment on all aspects of the issue of consumer notices in a ticketless air travel environment so that unnecessary documentation burdens can be eliminated, consistent with providing needed information to consumers in a timely fashion.

Discussion

At the time that the various passenger notice requirements described above were issued, all passengers received tickets. It appears that the ticket was chosen as the means for conveying required consumer information simply because tickets were a universally-available medium for documenting the carrier/passenger contract of carriage and providing notice in writing to individual passengers. We have found no evidence that the use of the word ''ticket'' in these notice rules contemplated that only airline passengers who receive traditional tickets are able and entitled to benefit from the information in these notices.

Indeed, there is ample evidence that these notice requirements were enacted in order to provide important information to all airline passengers. In issuing a rule requiring a ticket notice disclosing baggage liability limits, the Civil Aeronautics Board noted:

> As we stated in EDR–182, inadequate knowledge by the traveling public of the limits on liability for loss of or damage to baggage has been a recurring source of consumer complaints and this continues to be the case. [T]he Board has determined that the traveling public is entitled to effective notice of both Warsaw Convention and other baggage liability limitations. [ER–691 issued August 24, 1971; 36 FR 17034.]

In 1977 the Board issued a rule requiring a ticket notice disclosing overbooking practices. The agency stated:

> * * * while we find nothing unlawful in a carrier's attempt to insulate itself against a common law action of fraudulent misrepresentation by filing a tariff rule, such carrier and its agents should be required to provide the passenger with actual notice of its overbooking practices. Although, as the carriers point out, a passenger may be legally presumed to have knowledge of a carrier's tariffs, it is clearly unrealistic to expect passengers to have actual knowledge of the contents of tariffs. [ER–987 issued February 28, 1977; 42 FR 12420.]

In 1982, as domestic tariffs were being phased out, the Board issued a rule permitting carriers to continue to incorporate terms by reference into contracts with passengers, as they had with tariffs, but requiring a ticket notice disclosing the existence of the incorporated terms. The rule also required specific notice of certain terms affecting the refundability of the fare. The Board stated that it wanted to:

> * * * make sure that the traveling public are able to find out the terms they are ''buying into'' whenever they purchase an airline ticket, so that they can make an informed choice of carrier, class and flight, and protect themselves (for example, by buying extra insurance) against undesired risks * * * This rule is intended to alert passengers, and prospective passengers, that important terms are incorporated in ticket contracts * * * [ER–1302 issued September 27, 1982; 47 FR 52134; 14 CFR Part 253.]

One of the primary concerns of airlines at the time that the rule permitting continued incorporation of contract terms (14 CFR Part 253) was adopted was the possibility of being subjected to widely divergent standards involving notice of contract terms by the courts of many different states which might have jurisdiction over their contracts. Part 253 preempts state courts from involvement in the issue of notice of contract terms, so long as carriers comply with its provisions. Presumably, carriers that offer ticketless travel want to incorporate contract terms by reference and take advantage of liability limitations to the same extent as carriers that issue tickets. However, it is open to question whether courts will view a carrier's contract of carriage to be enforceable by a carrier if a consumer does not receive timely written notice of its applicability to the air transportation being purchased. At this point, we continue to believe that Part 253 strikes a balance between the Department's responsibility to protect consumers and its desire to allow airlines the maximum flexibility possible for their business decisions. Accordingly, for the same reasons that were cited when the part 253 disclosure rules were enacted, both carriers and passengers could face increased risks if notice of the incorporated contract of carriage terms were not to be provided to ticketless passengers in a timely fashion. We seek comment on whether carriers selling ticketless travel expect that their respective contracts of carriage will apply to the purchased transportation. We also seek comment on the costs and the benefits of providing notice of any incorporated contract of carriage terms to ticketless passengers within a few days after the purchase transaction, and the methods by which this could be accomplished. In addition to comments on all of the above issues, we specifically ask for comment on the issue of preemption if carriers do not provide written notice to ticketless passengers similar to that required under part 253.

In addition to conveying consumer notices, an airline ticket serves as a record of the passenger's reservation. The definition of ''confirmed reserved space'' in the Department's denied boarding rule (14 CFR § 250.1) is:

> * * * space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier, as being reserved for the accommodation of the passenger.

Thus, if a passenger has a ticket reflecting confirmed reserved space (generally indicated by the notation ''OK'' in the Status field), that passenger has a reservation for purposes of our denied boarding rule even if the carrier cannot locate the reservation in the computer. Under that rule, that passenger is entitled to compensation if not boarded. Ticketless passengers could be at a disadvantage in this regard if there is no evidence in their possession of having a reservation on a particular flight. The confirmation number provided at the time of the purchase may help the carrier locate the reservation, but if the computer record cannot be found, the confirmation numbers now being used may not establish that the passenger has a reservation on the specific flight for which he or she is checking in. Therefore, failure to provide confirmed passengers with an adequate written record of the confirmation could lead to numerous disputes between airlines and passengers regarding entitlement to denied boarding compensation as required by part 250. Such a written record could be the confirmation number alone, if the carrier has a system that allows airport agents to use a confirmation number to determine the status of the reservation associated with that number without resort to its computer reservation system (e.g., by using a coded confirmation number). However, if a carrier does not have a procedure free of reliance on a single computer reservation system, in order to achieve the same end it may be advisable for a written record of the reservation to be sent to the passenger at the time of the purchase to identify the specific flights, dates and classes of service purchased by the passenger, consistent with section 250.1. We ask for comments on whether passengers in a ticketless environment should receive evidence of their confirmed reservation independent of a carrier's computer reservation system and, if so, by what means.

Another issue raised by ticketless travel is that the passenger may have no record issued by the carrier or its agent of the fare that was quoted to and accepted by the passenger during the telephone call or other transaction when the transportation was purchased. The charge record from the passenger's credit card company may not arrive in the mail until after the flight, and should there be a disagreement at check-in over the correct fare, the passenger would have no evidence of the amount that he or she had agreed to pay. Although airline tickets contain fare information, no existing rule requires such a written record of the fare, and thus some carriers may not wish to create one for ticketless passengers. However, to the extent that written material is given to ticketless passengers in order to address other issues discussed here, providing a written record of the fare (perhaps generated from the record of the purchase transaction) would obviate many potential disputes over the amount of the fare. Comments are invited on how carriers deal with fare disputes with all passengers, but particularly with passengers who purchase tickets by phone, and on how often such disputes occur.

To the extent that carriers revise their systems as a result of any of the issues discussed in this Notice, it may be easier to incorporate fare information now than to have to add it later. It is likely that many business travelers will need a written statement of the fare for expense reports in any event. Providing fare documentation on a ticketless transaction may encourage more business travelers to use the system, which may in turn reduce carrier costs. We seek comment on the desirability and practicality of providing fare information in writing to ticketless passengers.

Article 3, section 2 of the Warsaw Convention (49 Stat. 3000, 49 U.S.C.A. 1502) requires that before a carrier can assert Warsaw liability limits for personal injury or death or for lost or damaged baggage with respect to a particular international passenger, the carrier must provide that passenger a ticket which states, *inter alia,* that the transportation is subject to the Convention's rules. This issue will need to be addressed.

Ticketless carriers that are providing consumer notices as we have recommended have been furnishing those notices in writing. We have advised those carriers that written notice could be provided through electronic text media such as ''e-mail'' and faxes. Oral notice during a telephone transaction alone would not meet the requirements of the current regulations that apply to ticket notices. The consumer notices that currently

appear on tickets are lengthier than the brief oral notice now required for code-sharing (14 CFR § 399.88) and the more detailed notices proposed for code-sharing and change-of-gauge service (59 FR 40836 and 60 FR 3778). In addition, the code-sharing and change-of-gauge disclosures are alerts about a single fact, while the ticket notices contain more-detailed information that passengers may want to refer to during check-in or even after the flight (e.g., in the event of a problem). Finally, a written notice avoids disputes over what was said. To the extent that information in the notices currently required on tickets is provided to ticketless passengers, we seek comment on whether we should specify the methods by which this information should be transmitted and the timing of such notice.

We have stated to carriers that have contacted us about ticketless travel that the intent of the current regulations for notices on tickets is to ensure that the notices to passengers are provided in conjunction with the purchase transaction. Consistent with this concept, we have advised these carriers that we believe that on a ticketless sale the notices should be sent to the purchaser (via mail, fax, ''e-mail,'' personal delivery, or other timely means) within a few days after the purchase transaction. The purposes of the consumer notices may not be served if they are handed to passengers as they check in at the airport, or put in a queue to be mailed just before each passenger's flight. It is at the time of the purchase transaction that a passenger puts his or her money at risk on a restricted fare, and also enters into a contract. Passengers may wish to take certain actions before the flight as a result of reading the consumer notices, such as purchasing additional insurance or packing differently (e.g., putting expensive items in a carry-on bag). At the same time, we have also advised carriers that we recognize that if a passenger makes a ticketless purchase only a few days before departure and it would be impossible or unreasonably costly to get the required written material to him or her before the day of the flight, it may be necessary to provide this written material upon check-in at the airport. Such a procedure is similar to that now followed when tickets purchased by telephone within a few days of departure cannot be mailed due to the lack of time. We seek comment on the question of when any notices, if required, should be provided.

Some carriers have introduced machines that accept a credit card or ''smart card.'' If the machine delivers a standard ticket, the required information must be on the ticket, pursuant to the Department's current regulations on ticket notices. If the machine processes a ticketless sale, a page containing the required information could be printed out with each transaction, or the machine could print the passenger-specific data (i.e., confirmation information and fare) on a receipt and a supply of the consumer notices could be kept in a container attached to the machine with a sign asking customers to take one. We seek comment on whether written notices, if required, should be provided during such transactions, and how they should be furnished. Should passengers who read and sign special ''disclosure forms,'' which provide all currently required notices, in order to obtain a ''smart card'' also receive notices with each air transportation purchase?

Several airlines and Computer Reservations System vendors allow subscribers of commercial online services to make reservations and purchase air transportation (both ticketed and ticketless) online. A number of airlines have established home pages on the World Wide Web, raising the prospect of electronic sales of air transportation via that medium. To the best of our knowledge, most current online sales of air transportation result in the mailing of a ticket, which should normally include the required notices. However, in the case of an online ticketless purchase (as opposed to simply a reservation), the question arises whether the consumer information that currently appears on or with tickets should be provided, and if so, how. One way to do this would be to offer a prominent, convenient and inexpensive (in terms of connect-time charges) option for the passenger to download or print the notices during the purchase transaction. Another would be to ''e-mail'' the notices to the passenger's ''e-mail'' address. Simply advising the customer that the consumer information is available to be read elsewhere online may not be adequate, just as it would not be satisfactory in a conventional ticketing transaction for the seller to tell the passenger where he or she could locate the required notices. Comments on these issues are invited.

The current regulations concerning ticket notices state that the notices must appear on tickets issued by travel agents. In two recent rulemakings the Department has proposed new written notices to be given to passengers who book code-sharing flights or change-of-gauge flights. Those proposed rules specifically take ticketless travel into account, and they would, if adopted, require that the written disclosure proposed in those rules be given to persons who book through travel agents. See 59 FR 40836, August 10, 1994, ''Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases,'' and 60 FR 3778, January 19, 1995, ''Disclosure of Change-of-Gauge Services.'' Those who comment on this notice on ticketless travel should be aware that the conclusions and analysis set forth here do not reflect any of the comments filed in the two dockets cited above. Any party that filed comments in those dockets on the issue of disclosure by travel agents is invited to file similar comments here.

We are currently of the view that providing timely written notice to ticketless passengers should not be unduly burdensome to carriers. The various procedures discussed in this Notice would represent no increase in required passenger notices; implementing the procedures (which we have previously recommended to carriers) would simply mean that the written information that has in the past been required to be provided to all passengers should continue to be provided to all passengers. We believe that virtually all carriers that offer ticketless travel have been following all of the procedures described in this Notice since last year, and doing so does not appear to have inhibited their ticketless programs. The high level of adherence to the ticketless travel notice procedures recommended by us and described in this Notice is, in part, attributable to the fact that it is in the best interests of the carriers and their customers to adopt such a system, as well as the apparent ease of following those procedures.

The notices in question would easily fit on the front and back of a single 8½ by 11 inch sheet of paper. If formatted differently or if the international notices are not provided to domestic passengers, the notices fit on the front of a single sheet. (The Department's Aviation Consumer Protection Division has created a sample sheet which is available by contacting the individual listed at the beginning of this notice under ''For Further Information.'' It is also available electronically through the World Wide Web at http://www.dot.gov/dotinfo/general/rules/aviation.html)

Some airlines that have implemented or studied ticketless travel have stated that most of the cost savings result from the elimination of ''back office'' processing of ticket coupons, physical security for ticket stock, and cumbersome procedures for refunding lost tickets, rather than from simply eliminating the printing of tickets

themselves. Those advantages would be unaffected by notice procedures such as those described in this document. We request specific comments on the monetary costs and the benefits of implementing the notice procedures discussed above.

The procedures discussed in this Notice are not new ones. As indicated above, over the past year we have communicated our views on this issue to several carriers that offer ticketless travel, and we have shared them with the Air Transport Association of America. In the two recent rulemakings mentioned above in which the Department has proposed new written notices to be given to passengers on code-sharing flights or change-of-gauge flights, the proposed provisions have been phrased to require the notices ''at the time of sale'' rather than on or with a ''ticket.'' The code-sharing proposal states in the Supplementary Information section that ''[T]he separate written notice requirement would apply whether or not the consumer is given an actual ticket to evidence the transportation * * * ''

It has been suggested that requiring ticketless passengers to be given written information is inconsistent with the fact that many airline passengers make reservations in advance but pick up their tickets at the airport. We seek comment on this point, because we see no direct inconsistency. The existing rules on ticket notices state that the notices are to be provided on or with the ticket. If the ticket is not furnished until the passenger arrives at the airport, that is when the passenger completes the contract with the carrier and should receive the notices, even if he or she had made a telephone reservation two weeks earlier. A passenger who makes a reservation by phone but purchases the ticket at the airport is not putting his or her money at risk at the time of the telephone reservation, nor is he or she entering into a contract at that point.

On the other hand, we recognize that it may not be uncommon for a passenger to purchase a ticket by credit card over the telephone a few days before departure, leaving insufficient time for the ticket to be mailed and requiring that it be picked up at the airport, at which time the required notices would first be provided. We ask for comments on the number of travelers who may purchase air travel in this manner and whether there have been any specific problems associated with such travelers not receiving required notices until they receive their ticket upon arrival at the airport. We ask that commenters address specific reasons for any problems or lack of problems experienced by travelers in this area (e.g., Are short-notice purchases likely to be most common among business persons or other frequent travelers who may already be familiar with contract terms provided in required notices?).

It has also been suggested that there is no justification for requiring such written notices on ticketless transactions in the airline industry when reservations for hotel rooms and rental cars are routinely made by telephone, with merely a confirmation number being given to the customer. However, these services are seldom paid for in full at the time of the reservation, and there is generally more flexibility to change reservations than is the case on a discount airline ticket. Also, few hotel or car rental transactions are subject to the terms of a 50-page contract of carriage as is common in air travel. Finally, state and local governments are not preempted from regulating hotel stays and car rentals, but those levels of government are preempted by federal law from regulating air carrier rates, routes or services. Nonetheless, comments on this issue are welcome.

The Department wishes to arrive at the most efficient and flexible means of delivering necessary consumer information without hindering the development of ticketless travel. To that end, we seek comment on all aspects of the agency views expressed in this Notice, especially with respect to any increased costs that may be imposed by adherence to the notice procedures which we have recommended and which are discussed above.

An electronic version of this document is available at http://www.dot.gov/dotinfo/general/rules/aviation.html

Issued this 5th day of January, 1996 at Washington, DC.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–546 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, and 270

[Release Nos. 33–7253; IC–21663; S7–32–95]

RIN 3235–AG63

Calculation of Yield by Certain Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms; extension of comment period.

SUMMARY: The Commission is extending from January 29, 1996 to March 29, 1996 the comment period for Investment Company Act Release No. 21538. This release proposed for public comment rule and form amendments that would require certain unit investment trusts (''UITs'') to use a uniform formula to calculate yields quoted in their prospectuses, advertisements, and sales literature.

DATES: Comments on the proposed amendments should be received on or before March 29, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–32–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Anthony R. Bosch, Senior Attorney, Office of Disclosure and Adviser Regulation, (202) 942–0721, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On November 22, 1995 the Commission published Investment Company Act Release No. 21538 which proposed for comment rule and form amendments that would standardize the calculation of yield quoted in the prospectuses, advertisements, and sales literature of certain UITs.[1] The Commission requested that comments on the proposal be received by January 29, 1996.

In a letter dated December 14, 1995 the Investment Company Institute (''ICI'') requested a 60-day extension for the period for commenting on the proposal.[2] The ICI requested the extension to allow additional time for further research, data generation, analysis, and discussion.

To permit additional time for research, data generation, analysis, and discussion and in light of the importance of comments on this subject, the Commission believes that a 60-day extension is appropriate. The comment

[1] Investment Company Act Rel. No. 21538 (Nov. 22, 1995) [60 FR 61454 (Nov. 29, 1995)].

[2] Letter from Craig S. Tyle, Vice President and Senior Counsel, Investment Company Institute, to Barry P. Barbash, Director, Division of Investment Management (Dec. 14, 1995).

period for responding to Investment Company Act Release No. 21538 is extended to March 29, 1996.

Dated: January 11, 1996.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–540 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Part 270

[Release No. IC–21660; File No. S7–2–96]

RIN 3235–AG59

Distribution of Shares by Registered Open-End Management Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is proposing a technical amendment to the rule under the Investment Company Act of 1940 relating to the distribution of shares by registered open-end management investment companies. Among other things, the rule requires the payment of an asset-based sales load to be made pursuant to a written plan that contains certain provisions and specifies the amount of the asset-based load. The proposed amendment would provide that a plan adopted prior to an investment company's initial public offering would not have to be approved by shareholders. Since the investment company's directors must approve the plan, and investors that buy their shares after the company's public offering, in effect, ''vote with their dollars'' to accept the plan, shareholder approval of the plan prior to the company's public offering is not necessary.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. All comment letters should refer to File No. S7–2–96. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Holly Hill-Little, Staff Attorney, or Elizabeth R. Krentzman, Assistant Chief, (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on a proposed amendment to rule 12b-1 [17 CFR 270.12b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'').

I. Discussion

Rule 12b-1 governs the payment of asset-based sales loads by registered open-end management investment companies (individually, a ''fund''). Among other things, rule 12b-1 requires a fund's payment of an asset-based sales load to be made pursuant to a written plan that contains certain provisions and specifies the amount of the load (a ''rule 12b-1 plan'').[1] The rule requires a rule 12b-1 plan to be approved by a majority of the fund's board of directors, including a majority of the independent directors, and a majority of the fund's outstanding shares prior to the plan's implementation.[2]

The shareholder approval requirement is unnecessary when a rule 12b-1 plan is adopted prior to a fund's initial public offering. Under these circumstances, the shareholders voting typically will be comprised of persons involved in organizing the fund (*i.e.*, the fund's investment adviser or its affiliates).[3] Shareholder approval, therefore, is virtually automatic, mechanical, and offers no real protection to the fund's shareholders. Investors purchasing shares in a fund's initial public offering, in effect, ''vote with their dollars'' to accept the fund's rule 12b-1 plan since the terms of the plan, and its effects on fund expenses, are disclosed in the fund's prospectus.[4]

As noted above, the fund's directors must approve the rule 12b-1 plan, including the asset-based load payable thereunder. In addition, fund shareholders must approve any changes in the rule 12b-1 plan that would materially increase the amount of the asset-based sales load and have the right to terminate the plan at any time. Taken together, these provisions provide shareholders with sufficient protection, without the need for a vote prior to the fund's public offering.

The proposed amendment would provide that a rule 12b-1 plan adopted prior to a fund's initial public offering would not have to be approved by shareholders.[5] If a fund adopts a rule 12b-1 plan following a public offering, the amended rule, like the current rule, would require the fund's shareholders to approve the plan.[6] The Commission requests comment on the proposed amendment.

II. Cost/Benefit Analysis

The proposed amendment would provide that a rule 12b–1 plan adopted prior to a fund's initial public offering would not have to be approved by shareholders. Shareholder approval is unnecessary since the fund's board of directors must approve the rule 12b–1 plan, and investors participating in the fund's initial public offering effectively ''vote with their dollars'' to accept the plan. The proposed amendment, if adopted, would no longer require funds to undergo the perfunctory exercise of obtaining approval from persons who have supplied the fund with its initial capital prior to the fund's public offering.

III. Summary of Initial Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act [U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendment would not, if adopted, have a significant economic impact on a substantial number of small entities. The amendment would enable funds, including small entities, to forgo the minimal time and expense associated with obtaining shareholder approval of rule 12b–1 plans from persons who have supplied the fund with its initial capital prior to the fund's initial public offering. The Chairman's

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[1] 17 CFR 270.12b-1(b).

[2] 17 CFR 270.12b-1(b)(1) and (2). The fund's board also must approve the continuation of the plan at least annually. 17 CFR 270.12b-1(b)(3)(i).

[3] In 1992, the Division of Investment Management discontinued the practice of requiring funds to submit their rule 12b-1 plans and certain other matters to a shareholder vote following the initial public offering of the fund's shares. *See* Investment Company Institute (pub. avail. Nov. 6, 1992).

[4] Items 2 and 7 of Form N–1A under the Securities Act of 1933 and the Investment Company Act, 17 CFR 239.15A and 274.11A.

[5] The Division of Investment Management has recommended eliminating the requirement for a vote on rule 12b-1 plans by initial fund shareholders. Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 277–78 (1992). Commenters, including the Investment Company Institute, also have recommended eliminating this requirement. Memorandum of the Investment Company Institute, Proposals To Improve Investment Company Regulation 27 (July 19, 1995).

[6] The proposed amendment would continue to require shareholder approval of a plan that is adopted after the sale of the fund's securities to persons who are not affiliates of the fund or its sponsor. Thus, for example, a plan would have to be approved by shareholders if adopted following the distribution of securities to persons other than fund insiders who provide the fund's ''seed capital'' required by section 14 of the Investment Company Act [15 U.S.C. 80a-14], without regard to whether the offering was registered under the Securities Act of 1933 [15 U.S.C. 77a].

certification is attached to this release as Appendix A.

IV. Statutory Authority

The Commission is proposing to amend rule 12b–1 pursuant to the authority set forth in sections 6(c), 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 6(c), 12(b), 37(a)].

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b–1 is amended by revising paragraph (b)(1) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(b) * * *

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company or affiliated persons of such persons;

* * * * *

By the Commission.

Dated: January 5, 1996.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*], which would provide that a plan for the payment of an asset-based sales load adopted prior to an investment company's initial public offering would not have to be approved by shareholders, would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendment would enable investment companies, including small entities, to forgo the minimal time and expense associated with obtaining shareholder approval of these plans from persons who have supplied the companies with their initial capital. Accordingly, the proposed amendment would not have a significant economic impact on a substantial number of small entities.

Dated: December 28, 1995.

Arthur Levitt,

Chairman.

[FR Doc. 96–504 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Notice of Extension of Comment Period.

SUMMARY: In light of the most recent shutdown of Agency operations due to the lack of appropriated funds, the National Labor Relations Board (NLRB) is extending from December 29, 1995, until January 25, 1996, the deadline for filing comments in response to its recent proposal to make permanent, following expiration of the experimental period, the experimental modifications to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (see 60 FR 61679). In a related document published elsewhere in today's Federal Register, the NLRB is also extending the experimental period from January 31, 1996, until March 1, 1996, to allow the Board time to consider the comments.

DATES: The deadline for filing comments on the Board's proposal to make the experimental modifications to the NLRB's rules permanent upon expiration of the experimental period is extended from December 29, 1995, until January 25, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

On December 22, 1994, following consideration of the comments received to the NPR, the Board issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

On December 1, 1995, following a review of the experience to date with the modifications and the views of the NLRB's Advisory Committee on Agency Procedure, the Board issued a notice proposing to make the modifications permanent upon expiration of the one-year experimental period on January 31, 1996 (60 FR 61679). The notice provided for a period of public comment on this proposal, until December 29, 1995.

Beginning December 18, 1995, during the comment period, and continuing until January 5, 1996, the Agency's offices were closed due to the lack of appropriated funds. As a result, both the experiment and the comment period were interrupted.

Accordingly, consistent with the Agency's recently announced shutdown procedures (60 FR 50648), the Board has decided to extend from December 29, 1995, until January 25, 1996, the deadline for filing comments on its proposal to make the experimental modifications to the NLRB's rules permanent upon expiration of the experimental period. In a related document published elsewhere in today's Federal Register, the Board is also extending the experimental period from January 31, 1996, until March 1, 1996, to allow the Board time to consider the comments.

Dated, Washington, D.C., January 16, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–581 Filed 1–18–96; 8:45 am]

BILLING CODE 7545–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268, DA 96–8]

Advanced Television Services

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of reply comment period.

SUMMARY: This action, in response to a request indicating good cause to extend the reply comment period, made by Robert K. Graves of R.K. Graves Associates, on behalf of the HDTV Grand Alliance, extends the deadline for filing reply comments to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry in the above-cited docket. The intended effect of this action is to allow the parties to the proceeding to have additional time in which to file reply comments.

DATES: Reply comments are due on or before January 22, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Saul Shapiro (202–418–2600) or Roger Holberg (202–418–2130), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order Granting Extension of the Time for Filing Reply Comments in MM Docket No. 87–268, DA 96–8, adopted January 11, 1996 and released January 11, 1996. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Order Granting Extension of Time for Filing Reply Comments

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''), 10 FCC Rcd 10540, 60 FR 42130 (August 15, 1995). Comments on the Fourth Further Notice were due October 18, 1995, and reply comments on December 4, 1995. These deadlines were subsequently extended to November 15, 1995 and January 12, 1996, respectively in Order Granting Extension of Time for Filing Comments and Reply Comments, DA 95–2137, 60 FR 53902 (October 18, 1995). By Public Notice, DA 96–2, released July 11, 1996, the Commission, by delegated authority, provided that documents due to be filed on January 11 or 12, 1996 would be due instead on January 16, 1996.

2. An extension of time to reply comments until January 26, 1996 was requested by Robert K. Graves of R. K. Graves Associates, on behalf of the HDTV Grand Alliance (''Graves''), on the grounds that: (1) the volume of the comments covering a broad range of issues has made it difficult to prepare thoughtful and thorough responses within the current time frame; (2) the closure of the Commission as part of the partial federal government shutdown last November caused the comments to be filed on November 20 or later, at least five days after the scheduled due date; (3) the preoccupation of the Grand Alliance and other parties with preparations for the December 12 *en banc* hearing made it impossible to begin preparing reply comments until after the hearing and demonstrations; (4) a substantial body of additional testimony was filed in connection with the hearing, requiring further analysis; and (5) the blizzard of 1996 has made it very difficult for those involved in preparing the reply for the Grand Alliance to communicate and share information effectively during the last week. Graves also notes that it has been impossible to request and extension earlier because the Commission has been closed, first because of the partial Government shutdown due to lack of appropriations and then because of the bad weather.

3. We find that good cause exists for granting a short extension of the reply comment deadlines in order to afford the parties an adequate opportunity for reasoned replies to the comments in this proceeding and are aware that the *Fourth Further Notice* raised many complex issues. Further, the blizzard of 1996, an extremely unusual event, has stalled mail deliveries, disrupted transit, and forced many workplaces to close, among other things, and has therefore undoubtedly complicated efforts to complete the reply comments, particularly for those parties whose comments required coordination among multiple entities or persons. However, we hesitate to extend the reply comment date until January 26, 1996, as requested because we do not want to unnecessarily delay the conclusion of this lengthy proceeding. Accordingly, we will grant a short extension of the reply comment deadline until January 22, 1996.

4. Accordingly, it is ordered, that the letter request, filed by Robert K. Graves on behalf of the HDTV Grand Alliance, seeking an extension of time in which to file reply comments in response to the *Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry in MM Docket No. 87–268*, is granted to the extent indicated herein and, in all other respects is denied.

5. It is further ordered, that the time for filing reply comments in the above-captioned proceeding is extended to January 22, 1996.

6. 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 C.F.R. §§ 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 96–706 Filed 1–18–96; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 61, No. 13
Friday, January 19, 1996

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

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice extends the application deadline for the Market Promotion Program for Fiscal Year 1996.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, Washington, DC 20250–1042, Telephone: (202) 720–5521.

The deadline for submission of applications for the 1996 MPP has been extended to January 22, 1996, due to inclement weather conditions in the Washington, DC area which has affected mail delivery service.

All applications (an original and two copies) must be either hand delivered or sent by postal delivery and must be received by 5:00 p.m. eastern time, Monday, January 22, 1996, at the following address:

Hand Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue SW., Washington, DC 20250–1042.

Postal Delivery: U.S. Department of Agriculture, Marketing Operations Staff, Ag Box 1042, Washington, DC 20250–1042.

For more detailed information regarding the application process or other terms and requirements of the MPP, contact the Marketing Operations Staff, FAS. USDA at the address above or telephone (202) 720–5521. Comments regarding the conduct of the MPP may be directed to either address as applicable.

Signed at Washington, DC, on January 16, 1996.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 96–655 Filed 1–17–96; 8:45 am]

BILLING CODE 3410–10–M

Food and Consumer Service

Summer Food Service Program for Children Program Reimbursement for 1996

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP or Program). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the SFSP (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1996 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1994 through November 1995.

The new 1996 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	1.2075
Lunch or Supper	2.1675
Supplement	.5700

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast	.1125
Lunch or Supper	.2050
Supplement	.0550

b. For meals served at other types of sites:

Breakfast	.0875
Lunch or Supper	.1700
Supplement	.0450

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 2.3 per cent increase during 1995 (from 146.8 in November 1994 to 150.2 in November 1995) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department points out that the administrative rates for Supplements ''served at rural or self-preparation sites'' and for Breakfasts served at ''other types of sites'' are the same rates that were in effect last year because the increase in the Consumer Price Index was insufficient to raise either of the rounded rates to the next higher quarter cent.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 4, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–500 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Newspaper Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice.

SUMMARY: This is a revision to the notice which appeared in the Federal Register on May 11, 1995 (60 FR 25196). This notice listed the newspaper of record for the Forest Supervisor decision of the Okanogan National Forest (Washington) to be *Omak Chronicle* (Omak, Washington). This revised notice changes the principal newspaper for publication of legal notice of decisions (comment and appeal) for the Forest Supervisor of the Okanogan National Forest to *The Wenatchee World* (Wenatchee, Washington).

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: James Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623.

Dated: January 11, 1996.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 96–561 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

Newspaper To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5(d), the public shall be advised, through Federal Register notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the Federal Register published in June 1, 1995, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspaper listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester decisions: Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

Southern Region

Regional Forester decisions: Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest(s) of that state.

National Forests in Alabama; Alabama

Forest Supervisor Decisions:

Montgomery Advertiser, published daily in Montgomery, AL.

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL.

Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District, *The Tuscaloosa News*, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL.

Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL.

Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:

El Nuevo Dia, published daily in Spanish in San Juan, PR.

San Juan Star, published daily in San Juan, PR.

District Ranger Decisions:

El Horizonte, published weekly (Wednesday) in Fajardo, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions: The Times, published daily in Gainesville, GA.

District Ranger Decisions: Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA.

Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA.

Dahlonega Nugget, published weekly (Thursday) in Dahlonega, GA.

Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA.

Chattooga Ranger District: *Northwest Georgian*, published weekly (Tuesday) in Cornelia, GA.

Toccoa Record, published weekly (Thursday) in Toccoa, GA.

White County News, published weekly (Thursday) in Cleveland, GA.

Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA.

Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press, published daily Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions:

Ocoee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN.

Hiwassee Ranger District: *Daily Post-Athenian,* published daily (Monday–Friday) in Athens, TN.

Tellico Ranger District: *Monroe County Advocate,* published weekly (Thursday) in Sweetwater, TN.

Nolichucky Ranger District: *Greeneville Sun,* published daily (Monday–Saturday) in Greeneville, TN.

Unaka Ranger District: *Johnson City Press,* published daily in Johnson City, TN.

Watauga Ranger District: *Elizabethton Star,* published daily (Sunday–Friday) in Elizabethton, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions:

Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY.

Stanton Ranger District: *The Clay City Times,* published weekly (Thursday) in Stanton, KY.

Berea Ranger District: *Jackson County Sun,* published weekly (Thursday) in McKee, KY.

London Ranger District: *The Sentinel-Echo,* published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Somerset Ranger District: *Commonwealth-Journal,* published daily (Sunday through Friday) in Somerset, KY.

Stearns Ranger District: *McCreary County Record,* published weekly (Tuesday) in Whitley City, KY.

Redbird Ranger District: *Manchester Enterprise,* published weekly (Thursday) in Manchester, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions:

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions:

Apalachicola Ranger District: *The Weekly Journal,* published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: *The Ocala Star Banner,* published daily in Ocala, FL.

Osceola Ranger District: *The Lake City Reporter,* published daily (Monday–Saturday) in Lake City, FL.

Seminole Ranger District: *The Daily Commercial,* published daily in Leesburg, FL.

Wakulla Ranger District: *The Tallahassee Democrat,* published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:

The State, published daily in Columbia, SC.

District Ranger Decisions:

Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Andrew Pickens Ranger District: *Seneca Journal and Tribune,* published bi-weekly (Wednesday and Friday) in Seneca, SC.

Long Cane Ranger District: *The State,* published daily in Columbia, SC.

Wambaw Ranger District: *News and Courier,* published daily in Charleston, SC.

Witherbee Ranger District: *News and Courier,* published daily in Charleston, SC.

Tyger Ranger District: *The Union Daily Times,* published daily in Union, SC.

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions:

Roanoke Times & World-News, published daily in Roanoke, VA.

District Ranger Decisions:

Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA.

Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA.

Pedlar Ranger District: *News-Gazette,* published weekly (Wednesday) in Lexington, VA.

James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA.

Deerfield Ranger District: *Daily News Leader,* published daily in Staunton, VA.

Dry River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA.

Blackburg Ranger District: *Roanoke Times & World-News,* published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman.*)

Glenwood Ranger District: *Roanoke Times & World-News,* published daily in Roanoke, VA.

New Castle Ranger District: *Roanoke Times & World-News,* published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman.*)

Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA.

Clinch Ranger District: *Kingsport-Times News,* published daily in Kingsport, TN.

Wythe Ranger District: *Southwest Virginia Enterprise,* published bi-weekly (Wednesday and Saturday) in Wytheville, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:

Alexandria Daily Town Talk, published daily in Alexandria, LA.

District Ranger Decisions:

Caney Ranger District: *Minden Press Herald,* published daily in Minden, LA.

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: *Alexandria Daily Town Talk,* published daily in Alexandria, LA.

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA.

Evangeline Ranger District: *Alexandria Daily Town Talk,* published daily in Alexandria, LA.

Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday–Saturday) in Natchitoches, LA.

Vernon Ranger District: *Leesville Leader,* published daily in Leesville, LA.

Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions:

Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Biloxi Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Black Creek Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Bude Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Strong River Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Ashe-Erambert Project: *Clarion-Ledger,* published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions:

Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: *The Sun Journal,* published weekly (Sunday through Friday) in New Bern, NC.

French Broad Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC.

Grandfather Ranger District: *McDowell News,* published daily in Marion, NC.

Highlands Ranger District: *The Highlander,* published weekly (May–Oct Tues & Fri; Oct–April Tues only) in Highlands, NC.

Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC.

Toecane Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC.

Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC.

Wayah Ranger District: *The Franklin Press,* published bi-weekly (Wednesday and Friday) in Franklin, NC.

Quachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions:

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions:

Caddo Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Jessieville Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Mena Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Poteau Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Winona Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Choctaw Ranger District: *Tulsa World,* published daily in Tulsa, OK.

Kiamichi Ranger District: *Tulsa World,* published daily in Tulsa, OK.

Tiak Ranger District: *Tulsa World,* published daily in Tulsa, OK.

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions:

The Courier, published daily (Sunday through Friday) in Russellville, AR.

District Ranger Decisions:

Sylamore Ranger District: *Stone County Leader,* published weekly (Tuesday) in Mountain View, AR.

Buffalo Ranger District: *Newton County Times,* published weekly (Thursday) in Jasper, AR.

Bayou Ranger District: *The Courier,* published daily (Sunday through Friday) in Russellville, AR.

Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR.

Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR.

Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR.

St. Francis Ranger District: *The Daily World,* published daily (Sunday through Friday) in Helena, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:

The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions:

Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Davy Crockett National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Sam Houston National Forest: *The Courier,* published daily in Conroe, TX.

Caddo & LBJ National Grasslands: *Denton Record-Chronicle,* published daily in Denton, TX.

The Responsible Official under 36 CFR part 215 gave annual notice in the Federal Register published in June 1, 1995, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Chattahoochee-Oconee National Forest, Georgia

District Ranger Decisions:

Brasstown Ranger District: (Secondary newspaper added) *Dahlonega Nugget,* published weekly (Thursday) in Dahlonega, GA.

Cohutta Ranger District: (Correction to existing newspaper) *The Chatsworth Times,* published weekly (Wednesday) in Chatsworth, GA.

Deletion of Ranger District:

Chattahoochee-Oconee National Forest, Georgia

District Ranger Decisions:

Chestatee Ranger District: *Dahlonega Nugget,* published weekly (Thursday) in Dahlonega, GA.

Correction to Newspaper of:

Daniel Boone National Forest, Kentucky

District Ranger Decisions:

Stanton Ranger District: (Correction to existing newspaper) *The Clay City Times,* published weekly (Thursday) in Stanton, KY.

Kisatchie National Forest, Louisiana

District Ranger Decisions:

Kisatchie Ranger District: (Correction to existing newspaper) *Natchitoches Times,* published daily (Tuesday–Saturday) in Natchitoches, LA.

Deletion of Ranger Districts:

National Forests in Texas, Texas

District Ranger Decisions:

Angelina Ranger District: *The Lufkin Daily News,* published daily in Lufkin, TX.

San Jacinto Ranger District: *The Courier,* published daily in Conroe, TX.

Neches Ranger District: *The Lufkin Daily News,* published daily in Lufkin, TX.

Raven Ranger District: *The Courier,* published daily in Conroe, TX.

Tenaha Ranger District: *The Lufkin Daily News,* published daily in Lufkin, TX.

Trinity Ranger District: *The Lufkin Daily News,* published daily in Lufkin, TX.

Yellowpine Ranger District: *The Beaumont Enterprise,* published daily in Beaumont, TX.

National Forests Added:

National Forests in Texas, Texas

District Ranger Decisions:

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Sam Houston National Forest: *The Courier*, published daily in Conroe, TX.

Dated: January 11, 1996.

Gloria Manning,

Deputy Regional Forester, Resources.

[FR Doc. 95–562 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

Suitability Studies for 22 Wild and Scenic Rivers, Tahoe National Forest, Placer, Yuba, El Dorado, Sierra, and Nevada Counties, California

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Tahoe National Forest and the Department of Interior, Bureau of Land Management, Folsom District, are preparing an environmental impact statement (EIS) and Forest Plan amendment which analyzes the suitability of 22 rivers in, and adjacent to, the Tahoe National Forest in California. A Revised Notice of Intent to prepare an Environmental Impact Statement was published in the Federal Register on Thursday, November 2, 1995 (60 FR 55696). That Notice announced that a draft environmental impact statement (DEIS) would be available for review in November of 1995; the DEIS is now expected to be available in March of 1996.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Phil Horning, Wild and Scenic River Coordinator, P.O. Box 6003, Nevada City, CA 95959, phone (916) 265–4531.

Dated: January 10, 1996.

John H. Skinner,

Forest Supervisor.

[FR Doc. 96–614 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on February 8 and 9th, 1996 at Mt. Bachelor Resort south of Bend, Oregon. Start time is 10 a.m. both days. Agenda items include: (1) Overview of winter recreation issues in the Deschutes Province; (2) Early response and Province comments on the Eastside Ecosystem project and DEIS; (3) An update on the salvage program on Province forests; and (4) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 541–383–4704.

Dated: January 9, 1996.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 96–613 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on February 5 and February 6, 1995 at the Hoopa Valley Tribe Neighborhood Facility Gymnasium, Highway 96, Hoopa, California. The meeting will begin at 10 a.m. on February 5 and adjourn at 5 p.m. The meeting will reconvene at 8 a.m. on February 6 and continue until 4 p.m. Agenda items to be covered include: (1) Forest health/stewardship contract update; (2) third party monitoring; (3) Province-wide forest health strategy; (4) short-term salvage priorities; (5) standing committee reports; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jim Anderson, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: January 9, 1996.

Robert J. Anderson,

Planning Staff Officer.

[FR Doc. 96–473 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on February 1, 1996 in the Las Palomas Banquet Room, 1085 East Washington, Sequim, Washington. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items are: (1) National Forest Timber Sales; (2) Review of Watershed Restoration Project Selections; (3) Access and Travel Management Assessment; (4) Open Forum and Agenda Items from the Advisory Committee; and (5) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated: January 10, 1996.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 96–486 Filed 1–18–96; 8:45 am]

BILLING CODE 3410–11–M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974: Amendment of CIA Systems of Records (CIA–57)

AGENCY: Central Intelligence Agency.

ACTION: Notice of amended system of records subject to the Privacy Act.

SUMMARY: The Central Intelligence Agency is providing notice on the amendment of a system of records in its current inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

EFFECTIVE DATE: This action is effective 40 days after publication in the Federal Register (February 28, 1996), unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, telephone: (703) 351–2083.

SUPPLEMENTARY INFORMATION: The record system, identified as CIA–57, is to be entitled: ''Personnel Security Records'' to reflect a change of organizational designation. CIA–57 has

been updated to include records maintained concerning required financial disclosure statements submitted by CIA employees and the authority (Executive Order 12968) for maintenance of such statements. CIA–57, as published in the Federal Register, Privacy Act Issuances—1993 Compilation, is being published herewith, as amended, in its entirety.

Dated: December 29, 1995.

Richard D. Calder,

Deputy Director for Administration.

CIA–57

SYSTEM NAME:

Personnel Security Records.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants; current and former Agency staff and contract employees; consultants; contractors; military and other Federal detailees; individuals of security interest, including individuals identified as being involved in the possible compromise of classified or otherwise protected information; persons of or contemplated for substantive affiliation with or service to the Agency; persons on whom the Agency has conducted an investigation; and Federal, civilian, and military personnel with whom the Agency conducts liaison.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including: Name, sex, date and place of birth, social security number, personal history statements, and past and present employers and addresses).

Financial and travel data.

Correspondence relating to an individual under consideration for access to classified information, projects, or facilities.

Public-source and bibliographic data on individuals and events of security interest.

Authorizations for the release of financial and travel information, high school and college transcripts, and other information.

Investigative reports, including investigative and data pertaining to actual or purported compromises of classified or otherwise protected information.

Personnel, medical, counterintelligence, and other information relating to the assessment or examination of an individual for access to classified information, facilities, projects, or for other security or suitability purposes.

Appraisal summaries reflecting the rationale for granting, refusing, suspending, terminating, or revoking a security clearance or access approval or authorization.

Documentation of and relating to any interim or final action taken by the Office of Personnel Security or other appropriate Agency official concerning any matter involving security, suitability, performance, or other issue.

Secrecy agreements.

Personnel actions.

Project files.

Documentation concerning the granting, refusing, revocation, suspension, or termination of clearances, access approvals, and access authorizations; levels of clearances held and types of access approvals and authorizations; approvals for personnel reassignments; notations that polygraph or other special interviews were performed; memoranda concerning security incidents and investigations; notices of termination of affiliation with the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended—Pub. L. 80–253.

Central Intelligence Agency Act of 1949, as amended—Pub. L. 81–110.

Section 506(a), Federal Records Act of 1950 (44 U.S.C. 3101).

Executive Order 10450.

Executive Order 12333.

Executive Order 12829.

Executive Order 12958.

Executive Order 12968.

Title VIII, Pub. L. 103–359.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used to ascertain whether there is any existing information concerning a person who is of immediate interest to the CIA. The system is also routinely used when:

A person applies for CIA employment or assignment;

A person is a candidate or associated with a candidate for some project, assignment, or award;

A person is slated for initial or re-evaluation of eligibility for access to classified information, facilities, or projects;

A person is subject to adverse actions, personnel assignments separations, termination, monitoring for suitability factors or security risks, or other similar administrative action;

A question arises as to whether a certain individual has been security approved, or considered for security approval by the CIA;

Necessary to provide information to U.S. government officials regarding a compromise of classified or otherwise protected information to protect classified information or intelligence sources and methods, or for statistical and substantive analysis of the data;

Necessary to otherwise make decisions on the utilization of individuals;

There is a need to obtain the security file of an individual who is known (or assumed) to be the subject of a file; and

CIA receives and responds to a request for security related information from another Federal agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfilm, computer disks, electronic storage, and magnetic tapes.

RETRIEVABILITY:

By name, social security number, other identification number.

SAFEGUARDS:

Records are safeguarded by combination lock security containers, or are stored within a vaulted area. Access is restricted to individuals who are certified on an ''Access List.'' The Access List is validated at least annually and circulated to responsible Agency officials so that they can ensure that records are accessed only for official purposes.

RETENTION AND DISPOSAL:

Files which contain Agency-developed investigative reports on an individual are retained a maximum of 50 years, then destroyed by burning or pulping. Liaison contact files are kept for three years, then destroyed by burning or pulping, except where there is a documented request to continue the liaison. Secrecy Agreements are retained a maximum of 70 years, then destroyed by burning or pulping. Other records are destroyed when no longer needed by burning or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Identification requirements are specified in the CIA rules published in the Federal Register (32 CFR 1901.13).

Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or correction of records, are promulgated in the CIA rules section of the Federal Register.

RECORD SOURCE CATEGORIES:

Current and former Agency employees; consultants; contractors; contract employees; military and other Federal detailees; applicants for employment; persons of or contemplated for substantive affiliation with or service to the Agency, Federal, state and local agencies, educational institutions, financial institutions and holding companies, consumer reporting agencies, commercial entities, employers, professional service providers, personal and business references provided by the individual under investigation, and acquaintances of the individual, as well as public source data (e.g., periodicals, newspapers, and broadcast transcripts), classified and unclassified reporting, and correspondence.

[FR Doc. 96–539 Filed 1–18–96; 8:45 am]

BILLING CODE 6310–02–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on January 24, 1996, at the TownHouse Inn, 1411 10th Avenue South, Great Falls, Montana 59405. The purpose of the meeting is to conduct orientation for new members, brief the Committee on Commission and regional activities, and finalize plans for a factfinding meeting on educational opportunities for Native American students.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Phillip Caldwell, 406–452–4345, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 16, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–635 Filed 1–17–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 795]

Grant of Authority for Subzone Status SGS-Thomson Microelectronics, Inc. (Semiconductors); Phoenix, AZ

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Phoenix, Arizona, grantee of Foreign-Trade Zone 75, for authority to establish special-purpose subzone status at the semiconductor manufacturing plant of SGS-Thomson Microelectronics, Inc., in Phoenix, Arizona, was filed by the Board on May 25, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 26–95, 60 FR 28574, 6/1/95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 75D) at the SGS-Thomson Microelectronics, Inc., plant in Phoenix, Arizona, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–459 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 796]

Transfer of Subzone 27G From FTZ 27 to FTZ 28, New Bedford, MA; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request with supporting documents (FTZ Docket 61–95, filed 10/10/95) from the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, Boston, Massachusetts, for reissuance of the subzone grant of authority at the Polaroid Corporation facility in New Bedford, Massachusetts, to the City of New Bedford, Massachusetts, grantee of Foreign-Trade Zone 28, which has joined in the request, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the City of New Bedford as the new grantee of the Polaroid Subzone, which is hereby redesignated as Subzone 28D.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–461 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 794]

Grant of Authority for Subzone Status BASF Corporation (Chemical Pigments/Dyes); Rensselaer, NY

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of

the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Capital District Regional Planning Commission, grantee of Foreign-Trade Zone 121, for authority to establish special-purpose subzone status at the chemical pigment/dye manufacturing facility of BASF Corporation in the Rensselaer, New York area, was filed by the Board on March 11, 1994, and notice inviting public comment was given in the Federal Register (FTZ Docket 11–94, 59 FR 13697, 3–23–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 121B) at the plant site of BASF Corporation in Rensselaer, New York, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include authority for the election of nonprivileged foreign status (19 CFR § 146.42) on foreign items used in manufacturing and processing activity which results in articles subject to a lower (actual or effective) duty rate than any of their foreign components.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–460 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 79–95]

Foreign-Trade Zone 84, Houston, Texas, Proposed Foreign-Trade Subzone, Exxon Corporation (Oil Refinery Complex) Harris County, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the oil refinery complex of Exxon Corporation, located in Harris County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 12, 1995.

The refinery and petrochemical complex (3,500 acres) is located on the Houston Ship Channel at 2800 Decker Drive, Harris County (Baytown area), Texas, some 25 miles east of Houston. The refinery (400,000 barrels per day; 4,000 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemicals include resins, epichlorohydrin, methyl ethyl ketone, allyl chloride, secondary butyl alcohol, polypropylene, methane, ethane, propane, butane, butylene, ethylene, propylene and butadiene. Refinery by-products include sulfur and petroleum coke. Some 60 percent of the crude oil (85 percent of inputs), and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. Foreign merchandise would also be exempt from state and local *ad valorem* taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 19, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 3, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, #1 Allen Center, Suite 1160, 500 Dallas, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 14, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–624 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–801]

Ball Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; Extension of Time Limit for New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary results in the new shipper administrative review of the antidumping duty order on ball bearings (other than tapered roller bearings) and parts thereof from Germany, covering the period December 1, 1994, through May 31, 1995, since the Department has concluded that the case is extraordinarily complicated.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department received a request from Roulements Miniatures SA (RMB) and Miniaturkugellager GmbH (MKL), to conduct a new shipper administrative review of the antidumping duty order on ball bearings (other than tapered roller bearings) and parts thereof from Germany. On June 14, 1995, the Department initiated a new shipper review of MKL, a manufacturer and exporter of ball bearings to the United States, for the period December 1, 1994 through May 31, 1995 (60 FR 32503).

Because this is one of the first new shipper reviews, the Department finds this case to be extraordinarily complicated. Therefore, we are unable to complete this review within the time limits mandated by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Tariff Act). Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results to January 31, 1996.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34(b).

This extension is in accordance with section 751(a)(2)(B)(iv) of the Tariff Act (19 U.S.C. 1675(a)).

Dated: December 15, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–462 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–421–701]

Brass Sheet and Strip From The Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 28, 1994, the Department of Commerce (the Department) published the preliminary results of its 1990–91 administrative review of the antidumping duty order on brass sheet and strip from the Netherlands. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Outokumpu Copper Rolled Products AB (OBV), during the period August 1, 1990 through July 31, 1991. The review indicates the existence of dumping margins for this period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and as a result of a change in the treatment of home market consumption taxes, we have adjusted OBV's margin for these final results.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994(59 FR 66892), the Department published in the Federal Register the preliminary results of its 1990–91 administrative review of the antidumping duty order on brass sheet and strip from the Netherlands (53 FR 30455, August 12, 1988).

Applicable Statute and Regulations

The Department has completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is August 1, 1990 through July 31, 1991. The review involves one manufacturer/exporter, OBV.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of OBV, we held a hearing on February 10, 1995. We received case and rebuttal briefs from OBV and from the petitioners, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC).

Comment 1: The respondent alleges that in the preliminary results of review the Department incorrectly treated certain payments made by OBV to its U.S. affiliate, Outokumpu Copper Inc. (OCUSA), as commissions and adjusted for them as direct selling expenses. The respondent explains that its purchase price data list reports three different types of transactions in the commissions column, and that only one of the three types of transactions thus reported should be adjusted for as a direct selling expense.

The only true commissions on U.S. sales, according to the respondent, are those which were paid to Global Metals Corporation (Global), an independent agent. These commissions, the respondent explains, are all labeled ''U'' (unrelated) on the sales list.

The second type of transaction reflected in the commissions field, the respondent states, is an intra-corporate transfer of funds from the parent to the U.S. affiliate, and can be identified by both the label ''R'' (related party) and by the fixed per-pound amount of the charge involved.

In support of its position concerning this second type of payment, the respondent cites the Department's practice as expressed in *Color Picture Tubes from Korea* (56 FR 5385, 5386, February 11, 1991) (*Color Picture Tubes*), where the Department stated: ''[I]n general the Department regards payments to related parties as intracompany transfers of funds . . . .'' The respondent also cites *Television Receivers, Monochrome and Color, from Japan*, 53 FR 4050, 4053 (February 11, 1988), in which the Department stated: ''We consider payments to related parties to be mere intra-corporate transfers of funds rather than commissions.'' The respondent also cites similar language in *Porcelain-on-Steel Cooking Ware from Mexico*, 51 FR 36435 (October 10, 1986).

The respondent further argues that the Department is permitted to make an adjustment for related-party commissions only if (1) the record demonstrates that the commissions are directly related to the sales subject to review and (2) the payments reflect an arm's length rate. As authority for this point the respondent cites *Outokumpu Copper Rolled Products AB* v. *United States*, 850 F. Supp. 16 (CIT 1994) (*Outokumpu/Sweden*), *LMI Industriale S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990)(*LMI*), *Color Picture Tubes*, and *Brass Sheet & Strip from the Netherlands; Final Results of Antidumping Administrative Reviews*, 57 FR 9534 (March 19, 1992). With regard to the payments at issue, the

respondent denies that the payments in question are directly related to sales and argues that in any case the payments were not arm's length.

The third type of payment reported in the commissions field, the respondent explains, is labeled ''R'', but can be distinguished from the second type of payment because it reflected varying percentages of the sales price, unlike the one fixed rate which applied to the second type of payment. This third type of payment, the respondent states, was associated with closed-consignment sales and consisted of ''the difference between the transfer price and the price charged by OCUSA to the customer''. The respondent further clarifies this third type of payment:

Unlike other purchase price sales it processed, OCUSA was not paid a commission on any of the closed consignment purchase price sales handled by OCUSA. * * * OCUSA received the difference, if any, between the transfer price it paid to OBV and the amount OCUSA invoiced to the customer. * * * the amounts reported as ''commissions'' in this instance were paid to OCUSA by the customer as a mark-up, not by OBV to OCUSA.

The respondent argues that it only reported the amounts of the third type of payment in response to the Department's February 12, 1992 supplemental questionnaire, which noted that certain purchase price sales showed no commissions. In reporting these amounts, the respondent ''placed the Department on notice that these amounts, in fact, were not commissions.''

The respondent cites the Department's treatment of the same type of payments as indirect expenses in the two preceding reviews, and cites the Department's treatment of the same kind of payments as indirect expenses in the 1988–1990 reviews of the antidumping duty order on brass sheet and strip from Sweden. In the latter case, the respondent mentions, the Court of International Trade (CIT), in *Outokumpu/Sweden,* upheld the Department's treatment of the intracorporate transfers in question as indirect selling expenses.

The petitioners argue that the Department correctly treated all three types of payments as commissions. They contend that OBV understated the first type of payments, commission payments to Global, since OBV reported amounts that were less than the rate in the contract between the two parties.

As for the second type of payment discussed above, the petitioners point out that in the most recently completed review of brass sheet and strip from Sweden (60 FR 3617, January 18, 1995), the Department reversed the position it had expressed in prior reviews of that order and in *Outokumpu/Sweden,* and determined that the payments made by the Swedish parent to OCUSA should in fact be treated as commissions.

The petitioners argue that the payments are directly related to sales since they are paid on a percentage basis, based on the value of the sales made. The petitioners point out that the Department found in prior reviews that the payments were directly related to sales. The petitioners add that, based on the U.S. sales verification, OBV's questionnaire response, and OBV's discussion of the commission issue in its pre-hearing brief, the respondent appears to have understated commissions and to have provided contradictory information as to whether certain commissions, including those paid to an unrelated party, were paid on a percentage basis or on a fixed cents-per-pound basis.

The petitioners also argue that by law, the burden of proof concerning whether commission rates are arm's length is the respondent's, citing *Timken Co.* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987). The petitioners maintain that the respondent has not met this burden of proof.

Concerning the third type of payments in question, those which the respondent characterizes as mark-ups between its intra-company transfer price and the price paid by the unrelated customer to OCUSA, the petitioners argue that, if the sales to which these payments correspond were truly purchase price sales, then ''such an arrangement clearly constitutes a commission payment''. If, on the other hand, OBV's prices to unrelated customers were adjusted by OCUSA's addition of a further charge to the customer, then these are exporter's sales price (ESP) sales, rather than purchase price sales.

The petitioners cite the respondent's statement at the U.S. sales verification, that the commission payments paid by OBV to OCUSA consist of a percentage of sales price plus add-on costs including a charge for warehouse cost and freight. The petitioners argue that such charges ought to have been separately reported by the respondent and treated by the Department as direct deductions from U.S. price (USP).

In light of the information discovered at verification, the petitioners argue, the Department should handle the reported commission payments as follows: For payments to the unrelated commissionaire, apply a rate based on the percentage of sales which is stipulated in the contract, rather than on a cents-per-pound rate. For payments by OBV to OCUSA reported as commissions, *i.e.*, for both the second and third types of payments reported by the respondent, the petitioners argue that the Department should assume that of the total commission amount reported, only the same percentage as was paid to the outside commissionaire corresponds to actual commissions; any remaining amount should be treated as other direct costs and deducted from USP. The petitioners argue that this adjustment of the reported commission payments should cover all sales made through OCUSA, since the blending of separate expenses within the commission amounts occurred in both standard and closed-consignment sales.

Department's Position: Concerning the first type of payments, those made to Global, there is no dispute that the payments were directly related to sales and should be deducted from USP for ESP sales, and added to foreign market value (FMV) for purchase price sales.

We disagree with the petitioners that OBV understated the amounts of these payments. The apparent difference noted by the petitioners between the percentage in the contract and OBV's reported commission payments is explained by other terms of the contract and in OBV's response. The contract with Global called for a limit on the commission for the portion of invoices associated with metal content; for this portion, the contract called for OBV to pay a lesser commission on all metal content exceeding a stipulated per-pound price. In fact, the amounts listed in OBV's submission (listed on a cents-per-pound basis), when converted to a comparable percentage, confirm that OBV adhered to the terms of the contract. Therefore, we have accepted the reported payments as accurate.

Concerning the second type of payment, those made to OCUSA by OBV, we reject petitioners' argument that the respondent has the burden of proving that such payments were not arm's length, as it is contrary to our practice. *See Outokumpu/Sweden,* 850 F. Supp. at 20–23; *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Spain,* 59 FR 66931, December 28, 1994 (Comment 4).

As we explained in *Final Determination of Sales at Less Than Fair Value; Coated Groundwood Paper from Finland,* 56 FR 56359 (November 4, 1991), we have interpreted *LMI* to mean that related-party commissions paid in either the United States or the home market are allowable as circumstance-of-sale adjustments when they are determined to be (a) at arm's

length and (b) directly related to the sales in question. Specifically with regard to the arm's-length prong of this test, ''Commerce has chosen to operate under the assumption that commission payments in related-party transactions are not at arm's length.'' *Outokumpu/Sweden,* 850 F. Supp. at 22. Because we presume that the related-party payments were not at arm's length, we do not require the respondent to prove that they were not at arm's length. *Id.*

The record in this review indicates that OBV's payments to OCUSA included amounts for freight, warehousing, and financing expenses; however, it does not indicate what portion, if any, of OBV's payments to OCUSA was intended to recompense OCUSA for commission-related services it provided equivalent to those provided by the unrelated party, Global. In addition, the record evidence shows that OBV's payments to OCUSA differed significantly *in toto* from those paid to the unrelated party. Given these circumstances, we are unable to compare OBV's payments to OCUSA to payments by OBV to the unrelated party for the purpose of assessing the arm's-length nature of OBV's payments to OCUSA. Therefore, we have treated OBV's payments to OCUSA as not at arm's length.

Accordingly, as in the prior reviews of this order (88–90) (57 FR 9536, March 19, 1992), we did not adjust for these payments as commissions in this review. However, we normally regard such payments to related parties as indirect selling expenses (*see Television Receivers, Monochrome and Color, from Japan: Final Results of Administrative Review,* 54 FR 13924 (April 6, 1989)). Thus, we added these payments to indirect selling expenses in the ESP calculations for these final results.

As for payments of the third type, those which were limited to closed-consignment sales, we disagree with the petitioners that these constitute commissions. The respondent has explained that these payments corresponded to the difference, if any, between the transfer price which OBV charged OCUSA and the price which OBV charged the American customer. As with the second type of payment discussed above, there is no evidence to overcome the presumption, which is supported by OBV's questionnaire response, that the portion of the price which OCUSA retained on closed consignment sales amounted to a transfer of funds from the parent to the U.S. subsidiary, rather than an arm's length commission. Thus, because we do not consider this third type of payment, involving closed-consignment purchase price sales, to be a commission, we have made no adjustment for these payments in these final results.

We also disagree with the petitioners' further argument that, if we do not treat as a commission the portion of closed-consignment sales prices which OCUSA retained, then we must characterize the sales in question as ESP sales. As OBV has pointed out, the terms of sale were governed by the long-term contracts entered into by these customers and OBV prior to importation and were not subject to adjustment by OCUSA following importation. Since the evidence on the record indicates that OCUSA functioned merely as a facilitator of documents, performing Customs clearance and related services, and that the terms of sale between OBV and the final customer were set prior to importation, we do not agree with the petitioners' argument that these sales should be reclassified as ESP transactions.

Value-Added Tax Adjustment Methodology

Comment 2: OBV argues that the Department must apply a tax-neutral methodology to the adjustment for value-added tax (VAT), and asks the Department to adjust for the VAT by using the actual amount of the VAT, rather than the VAT rate. The amount of the VAT, the respondent explains, can be calculated by multiplying the gross unit price times 18.5 percent. The respondent argues that the use of the VAT rate is arbitrary, capricious, and inherently unfair because it artificially inflates any dumping margin OBV may have. The respondent argues that this practice contravenes the Department's obligation to calculate fair and accurate margins.

OBV requests that the Department alter its methodology for the final results of review in accordance with footnote 4 of the decision of the Federal Circuit in *Zenith Electronics Corp.* v. *United States,* 988 F. 2d 1573, 1577 (Fed. Cir. 1993), (*Zenith*) and the decision of the CIT in *Hyster Co.* v. *United States,* Slip Op. 94–34 (March 1, 1994), at 11. The respondent argues that this change would eliminate the ''multiplier effect'' caused by applying the VAT rate rather than the actual VAT amount for each home market sale.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The CIT overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping asssessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Comment 3: The petitioners argue that the Department should eliminate from its U.S. sales data those sales for which both the dates of sale and the dates of entry were outside the POR.

Department's Position: We agree and have removed those U.S. sales from the analysis for which the dates of sale and dates of entry were outside the POR.

Comment 4: The petitioners argue that the Department should revise its preliminary width groupings used in product comparisons to achieve a comparison of the most similar merchandise possible. The petitioners accept in part the Department's use of the respondent's revised width groupings, which break down the narrowest single width category used in prior reviews into five narrower groups. The petitioners object, however, to the broader width grouping proposed by the respondent to replace previously-used multiple groupings above 2 inches in width, and urge the Department to use its previous groupings for widths over 2 inches.

In rebuttal the respondent notes that in selecting the product comparisons to be made, the Department decided to adopt the width groupings recommended by the respondent, as they more accurately reflected the facts of the respondent's product mix and manufacturing processes than the previous groupings.

Department's Position: We agree with the petitioners that it is preferable to seek model matches with the most similar possible home market merchandise. We concur that it is reasonable to use the narrower groupings proposed by OBV for widths of less than 2 inches, which were agreed to by the petitioner and which were used in the preliminary results, to the extent that these result in using more similar merchandise for model-matching purposes.

The petitioners are concerned that cost differences could be blurred in the widest of OBV's revised groupings, which covers all brass sheet & strip over 2 inches in width, thus potentially resulting in model-matching of dissimilar merchandise. For merchandise over 2 inches in width, the Department's original groupings will result in model matches of merchandise that are more similar in physical characteristics, as the petitioners argue. These width groupings over 2 inches in width are more similar than the respondent's proposed width groupings. As for OBV's argument that the groupings should be based on OBV's actual production costs, we consider the physical characteristics of merchandise when determining similar merchandise, not similarities or dissimilarities in production costs. For these final results, therefore, we have used the Department's original width groupings for merchandise over 2 inches in width; for narrower widths, we have continued to use the respondent's revised groupings that we used in the preliminary results.

Comment 5: The petitioners argue that the Department should adjust USP to account for unreported further processing in the United States. The petitioners cite the U.S. verification report's mention that ''at least one'' sale which the respondent had classified as a purchase price sale had been further processed in the United States, and that this additional information had not been disclosed in OBV's response. The petitioners emphasize the gravity of the omission of such costs, as described in *Tatung Co.* v. *United States,* Slip Op. 94–195, at 9 (CIT 1994)(*Tatung*), citing *Florex* v. *United States,* 705 F. Supp. 582, 588 (1989)(*Florex*), where the court stated: ''Commerce considers the omission of U.S. sales to be a serious matter, as does the court. Overstating U.S. price is also a serious matter.'' The petitioners compare OBV's oversight of the further processing costs in this instance with the failure by OBV's Swedish affiliate to fully report unpaid sales in the 1991–1992 reviews of Swedish brass, and cite the Department's application of best information available (BIA) in that case. Accordingly, the petitioners urge that the Department resort to BIA and assume that all of the sales to the customer for which the Department found these unreported further manufacturing costs were further-manufactured sales. The petitioners suggest that the Department should reclassify those sales as ESP and apply the further-manufacturing costs discovered at verification to all the other sales to that customer.

In rebuttal the respondent argues that the record demonstrates that the Department, as a result of finding this single instance of unreported further processing, conducted additional verification, specifically to determine if there were other such misreported sales, and did not find evidence of any such additional sales. The respondent argues that the precedents which the petitioners cite in urging the Department to apply BIA, *Florex* and *Tatung,* were different from the present case since the respondents' submissions to the Department in those cases contained errors as to commissions and U.S. sales expenses (*Tatung*), or errors in price, quantity, or grade (*Florex*).

Department's Position: We disagree with the petitioners that all sales to this one customer should be considered ESP transactions. We sought, but did not find, any information to indicate that the single unreported further processing charge which we discovered at verification was representative of more widespread, or deliberate, misreporting of such further processing expenses. Although the existence of further processing by itself does not conclusively establish whether a sale should be considered a purchase price or ESP sale, we normally treat further-processed sales as ESP sales. In this case, because we only discovered the further-processing costs at verification, we were unable to further investigate this sale in order to determine if it constituted a purchase price or ESP transaction. We note that both the petitioners and OBV agree that at least this one sale should be treated as an ESP transaction with a deduction of the further processing costs. For these final results, therefore, as best information available, we have treated the one sale in question as an ESP sale and have deducted the further processing costs.

Comment 6: The petitioners argue that the Department should adjust for unreported discounts discovered during verification. In particular, the petitioners urge the Department to revise its analysis to reflect certain early payment discounts to a specific U.S. customer that were discovered at verification; according to the petitioners, the Department should adjust all sales to the same customer for the amount of the unreported discount.

In rebuttal the respondent asserts that the error in question is of the type that requires a correction to the U.S. sales data base, not the punitive application of the discount to all sales to the same customer for which we found an unreported discount. The respondent explains that the error arose as a result of a transfer of responsibility for certain accounts following a corporate acquisition. The respondent has re-examined its sales list and identified seven sales in its case brief which it claims should be adjusted to reflect the unreported discount.

Department's Position: Since the respondent's new information about these seven sales was untimely, we have not considered it. OBV's explanation of the reasons for its failure to report the early-payment discount does not excuse such failure. As BIA for these unreported discounts, we have adjusted all sales to this customer for the early payment discount in these final results.

Comment 7: The petitioners argue that the Department should reduce OBV's overstated prices of ESP sales invoiced by American Brass (AB), a company which OCUSA acquired. The petitioners assert that the U.S. verification uncovered discrepancies between the reported prices to one U.S. customer and the amounts shown on invoices from AB. The respondent acknowledges that it misreported these sales by not including further processing costs in the reported unit prices. OBV suggests that the error can be corrected by relying on the total reported sales price, which is not in error, instead of the reported unit price.

Department's Position: We disagree with the petitioners. Since the respondent correctly reported total sales price, it would be unreasonable to apply punitive BIA for the erroneously reported unit prices. Instead, for these final results we have used as the basis for USP the total reported sales price divided by the total reported quantity, less all adjustments, since total price and total quantity were correctly reported.

Comment 8: The petitioners argue that the Department should adjust the respondent's U.S. processing costs to include losses on unaccounted-for merchandise, losses which were reported in revised data submitted at verification.

Department's Position: We agree and have included the revised scrap adjustments for these final results.

Comment 9: The petitioners argue that the Department should disallow OBV's quantity discount claim for home market sales. In rebuttal, OBV argues that it did not request such an adjustment and that the Department did not make such an adjustment.

Department's Position: We agree with OBV. The petitioners are mistaken that we deducted the discount from the home market price; in fact, it was not a requested adjustment, and we did not deduct it from home market price.

Clerical and Programming Errors

Comment 10: The petitioners argue that the Department failed to deduct freight expenses from home market price when conducting the cost test.

Department's Position: We agree and have deducted these freight expenses from home market price for these final results.

Comment 11: The petitioners argue that the Department incorrectly included several below-cost home market sales when calculating FMV. The respondent counters that the petitioners fail to identify which below-cost sales were erroneously included in home market sales, and notes further that it is Department policy to include below-cost sales when less than 10 percent of a model are found to be sold below cost within a particular month.

Department's Position: We disagree with the petitioners. We reviewed the computer program and we are satisfied that we did not consider below-cost sales other than those which were properly included, in calculating FMV.

Comment 12: The petitioners argue that the Department failed to deduct from USP U.S. selling expenses allocated to further manufacturing. The respondent argues that the further processing costs in question are in fact accounted for in the computer program.

Department's Position: We agree with OBV. We included in our analysis those U.S. selling expenses allocated to further manufacturing.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for OBV for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Percent margin
Outokumpu Copper Rolled Products AB (OBV)	5.20

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for OBV will be the rate outlined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate of 16.99 percent established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–620 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 22, 1994, the Department of Commerce published the

preliminary results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers the period March 1, 1992, through February 28, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–3058/4114.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1994, the Department of Commerce (the Department) published in the Federal Register (59 FR 60128) the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (51 FR 8341, March 11, 1986) for the period March 1, 1992, through February 28, 1993.

Applicable Statute and Regulations

The Department has completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this administrative review are shipments of certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. The item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the order.

The review period is March 1, 1992, through February 28, 1993. This review involves one company, Saha Thai Steel Pipe Company, Ltd. (Saha Thai).

Consumption Tax Methodology

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners and from Saha Thai. The petitioners in this case are the Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe Company.

Unlike the preliminary results, all margins for these final results were determined using price to price comparisons; therefore, the calculation of foreign market value (FMV) using constructed value (CV) was not necessary. Thus, we have not addressed comments regarding the calculation of CV for these final results.

Comment 1: Petitioners argue that the Department should reverse its preliminary finding that Saha Thai's home market sales of pipe and tube made to American Society of Testing Materials (ASTM) specifications were not in the ordinary course of trade. According to petitioners, the Department's finding is based on analysis contrary to law and lacks factual support.

Petitioners assert that when determining whether sales are outside the ordinary course of trade, the Department considers whether the sales were made for unusual reasons or under unusual circumstances. The purpose of this exercise is to ensure that the sale price is a bona fide, market-determined price that accurately reflects the value of

the merchandise. Petitioners note that the Department has performed an ordinary course of trade analysis when a respondent has demonstrated that certain sales were sample or trial sales, spot sales, sales of damaged merchandise, obsolete or discontinued models, or merchandise resulting from production overruns (overrun sales).

Petitioners argue that only when it has been established that certain sales are overruns will the Department conduct an ordinary course of trade analysis by considering all the circumstances of the sale. Citing *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review,* 56 FR 64753 (December 12, 1991) (*Pipe from India), and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value,* 56 FR 42942 (September 17, 1992) (*Pipe from Korea*), petitioners claim that the Department considers: 1) whether the sales were of overrun merchandise or seconds; 2) the volume of sales and number of buyers; 3) differences in product standards and uses between overrun and ordinary production; and 4) the price and profit differentials between overrun and ordinary merchandise in the home market.

While petitioners acknowledge that under certain conditions the Department has determined overrun sales to be outside the ordinary course of trade (*see Pipe from India*), they note that under other conditions the Department has determined sales of overrun merchandise to be within the ordinary course of trade (*see Pipe from Korea*).

Petitioners argue that none of the reasons stated by the Department in the preliminary results, taken alone or collectively, can support a finding that Saha Thai's ASTM sales were made outside the ordinary course of trade. Furthermore, petitioners contend that since the Department's preliminary analysis only considered the volume of sales and differences in standards and uses between ASTM merchandise and other related goods, it represented only a partial application of the four-part analysis used in *Pipe from India* and *Pipe from Korea.* While petitioners acknowledge that the two factors considered in the preliminary results relate to the existence of a viable separate market for ASTM goods, they argue that such factors should not be considered determinative.

Petitioners argue that Saha Thai must first establish that its home market ASTM sales were not normal commercial transactions. Petitioners assert that Saha Thai claimed only a portion of its home market ASTM sales as overrun production originally intended for export and failed to submit evidence to support its claim. Thus, petitioners conclude that the fundamental threshold condition needed to trigger an ordinary course of trade analysis is lacking. However, petitioners contend that if the Department decides to analyze all home market ASTM sales as potential overruns, it must nevertheless find that such sales were within the ordinary course of trade.

According to petitioners, the record indicates that Saha Thai sells a significant amount of ASTM pipe in the home market. Petitioners claim that such sales are at prices which support rather than detract from the inference that home market ASTM sales are in the ordinary course of trade. Additionally, petitioners argue that Saha Thai's admission that it produced ASTM pipe in response to specific requests by home market customers is further evidence that an indigenous consumer-driven market for ASTM pipe exists, warranting its production and marketing for ordinary commercial reasons. Petitioners argue that while the use of ASTM pipe in the home market may be less common than the use of British Standard (BS) pipe, there is nothing on the record to indicate that the conditions and practices of sale of ASTM pipe were commercially unusual by the standards of the trade for all standard pipe in the home market.

Saha Thai argues that it has met its burden of demonstrating that ASTM sales were outside the ordinary course of trade and that the Department has properly excluded such sales from the calculation of FMV. Saha Thai claims that the four-part test established in *Pipe from India,* and affirmed by the Court of International Trade (CIT) in *Mantex, Inc.* v. *United States,* 841 F. Supp. 1290, 1305–1309 (CIT 1993) (*Mantex*), controls the disposition of the issue before the Department, because it addresses the question of when the sale of pipe not made to the governing local standard can be considered to be within the ordinary course of trade. Saha Thai argues that application of the four-part test to the facts of this case confirms that domestic ASTM sales by Saha Thai were outside the ordinary course of trade.

First, Saha Thai notes that the British standard, not the ASTM standard is the governing standard for pipe sold in Thailand. According to Saha Thai, ASTM pipes are sold in Thailand on the basis of special orders or for special projects in which the entire project is supplied with ASTM pipe. ASTM pipes cannot be used in most piping systems in the home market or to replace existing piping systems except in those limited instances in which an entire project was built to ASTM standards. Saha Thai argues that these same conditions were present in *Pipe from India,* and the CIT upheld the Department's consideration of product use in determining that certain sales were outside the ordinary course of trade. *See Mantex.*

Second, Saha Thai notes that the volume of sales and the number of buyers for ASTM pipe in the home market is significantly smaller than for BS pipe. Saha Thai claims that reliance on low sales volumes and a limited number of buyers in an ordinary course of trade analysis was expressly approved by the CIT in *Mantex.*

Third, Saha Thai claims that the significant price and profit differential between ASTM and BS pipe sold in Thailand is indicative of sales outside the ordinary course of trade. Saha Thai notes that price and profit differentials were considered by the Department in *Pipe from India,* and upheld by the CIT in *Mantex.* Saha Thai acknowledges that, unlike *Pipe from India,* price and profit levels of ASTM pipe in Thailand are substantially higher than domestic standard pipe. However, it argues that it is not important that the prices of ASTM pipe are higher than the local standard, but rather that a significant difference exists. Saha Thai claims that this phenomenon of higher profit and price levels for ASTM pipe is attributable to the very narrow market segment represented by sales of ASTM pipe.

Finally, Saha Thai notes that the value and volume of ASTM pipe produced by Saha Thai is primarily destined for export.

Department's Position: We have determined that, after re-examining the facts on the record in light of the four-factor test of *Mantex,* Saha Thai's sales of ASTM pipe in the home market were not made outside the ordinary course of trade. Therefore, with the exception of ASTM ''punched hole'' irrigation pipe, we have used sales of ASTM pipe in the home market as the basis for FMV in these final results.

As stated in the preliminary results of this review, when determining whether sales were made outside the ordinary course of trade we do not rely on one factor taken in isolation but rather consider all the circumstances surrounding the sales in question. Consistent with *Pipe from India,* and *Pipe from Korea* we have examined for these final results: (1) The different standards and product uses of ASTM

and BS pipe; (2) the comparative volume of sales and number of buyers of ASTM and BS pipe in the home market; (3) the price and profit differentials between ASTM and BS pipe sold in the home market; and (4) the issue of whether ASTM pipe sold in the home market consisted of production overruns or seconds. It should be noted that our examination of the circumstances of the sales in question is not limited to the factors listed above and no one factor is determinative.

While we agree with Saha Thai that there are similarities between this case and *Pipe from India,* there are a number of important factors which distinguish this case. First, there is no information on the record which indicates that the ASTM sales in question are production overruns of merchandise that was originally intended for export. Indeed, the record in this case indicates that Saha Thai produced and sold ASTM pipe in response to specific orders placed by customers in the home market. While sales of merchandise other than overruns may be found to be outside the ordinary course of trade, the fact that the merchandise was produced in response to specific orders indicates that Saha Thai made these ASTM sales under ''conditions and practices * * * which have been normal in the trade under consideration.'' (section 771(15) of the Tariff Act).

Second, while ASTM pipe is less common in the home market than BS pipe, and is not compatible with BS pipe, there is nothing on the record to indicate that ASTM pipe sold in the home market is being used for purposes other than those for which it was intended. Unlike this case, in *Pipe from India,* the Department found that ''customers for ASTM pipe in India used the pipe for a very limited number of purposes *quite different from its intended standard purposes*'' (56 FR at 64755)(emphasis added).

Third, the record indicates that the average sales quantity of ASTM pipe sold in the home market did not differ significantly from the average sales quantity of BS pipe. Furthermore, while the total volume of ASTM sales and the number of customers purchasing ASTM pipe may be small in comparison to BS pipe, the level of ASTM sales activity in the home market is significant enough to dispel the notion that such sales are spot sales, sales of obsolete merchandise or periodic attempts to liquidate ASTM merchandise originally produced for export. Indeed the CIT has clearly stated that ''[w]hether an importer has made sales in the ordinary course of trade depends on whether the importer made the sales under conditions that are normal for the product that is being sold, *not whether the importer normally sells the subject merchandise.*'' *See, East Chilliwack Fruit Growers Co-Operative v. United States,* 11 CIT 104, 108, 655 F.Supp. 499, 504 (1987) (emphasis added).

Fourth, we disagree with Saha Thai that its higher price and profit levels on sales of home market ASTM pipe in comparison to BS pipe indicate that its ASTM sales are outside the ordinary course of trade. Just as it is not a requirement that different price and profit levels be demonstrated in order for sales to be determined outside the ordinary course of trade, (*see, Pipe from India*), the existence of different price and profit levels does not necessarily indicate that sales are outside the ordinary course of trade.

Finally, the fact that Saha Thai produces the majority of ASTM pipe for export does not in any way indicate that the circumstances surrounding its sales of ASTM pipe in the home market are not normal. Unlike *Pipe from India* where it was determined that a ready market did not exist for production overruns of ASTM pipe that was originally produced for export, the record in this case indicates that Saha Thai produces and sells ASTM pipe in the home market specifically in response to orders placed by its home market customers. Such circumstances further indicate that a ready market for ASTM pipe exists in the home market.

As demonstrated above, when the factors are properly considered in their totality, the claimed similarities between *Pipe from India* and this case prove to be unfounded. Therefore, based on the analysis articulated above, we have determined that sales of ASTM pipe in the home market were not made for unusual reasons or under unusual circumstances but rather were made in response to genuine domestic demand. Thus we have included sales of such merchandise in our calculation of FMV for these final results.

Comment 2: Petitioners argue that if the Department finds that home market sales of the identical or most similar merchandise were not made in the contemporaneous 90/60 window, it must use CV as the basis for FMV. Petitioners contend that the Department's decision not to use CV and instead select the next most similar merchandise sold within the 90/60 window violates Department policy.

Petitioners argue that, although it is clear that prices for matched merchandise sold outside the 90/60 window cannot be the basis for FMV, section 773 of the Tariff Act does not allow the Department to redefine such or similar merchandise as another, less similar product sold in the 90/60 window. Petitioners contend that to do so would be to incorrectly read into section 771(16) of the Tariff Act an added requirement that the Department select not only the most similar product under its hierarchy, but also one that was sold in a contemporaneous time frame.

Petitioners argue that the Department has consistently rejected attempts to condition the determination of such or similar on any basis other than similarity of the merchandise. Petitioners note that the Department has explained its policy of matching such and similar merchandise on the basis of the similarity of the merchandise without regard to the results of the test for sales below cost. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992) (*AFBs from France*). Petitioners also argue that, in *Cyanuric Acid and Its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade; Final Determinations of Sales at Less Than Fair Value,* 49 FR 7424 (February 29, 1984) (*Cyanuric Acid*), the Department refused to allow an ordinary course of trade requirement to influence product matching. Additionally, petitioners cite *Timken Co.* v. *United States,* 673 F. Supp. 495 (CIT 1987), and *NTN Bearing Corp.* v. *United States,* 747 F. Supp. 726, 736 (CIT 1990) as support for the practice of disregarding the level of trade at which products are sold and determining similarity solely on the basis of physical similarity. Finally, petitioners contend that, in *Color Television Receivers from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review,* 58 FR 52262 (October 7, 1993) (*CTVs from Korea*), the Department refused to consider matching sales to the next most similar merchandise, and instead based FMV on CV, when sales of the identical or most similar merchandise were not made in a contemporaneous time frame.

Therefore, petitioners contend that the preliminary decision to allow the timing of the home market sale to influence the selection of identical or similar merchandise is inconsistent with the Department's practice of identifying such or similar merchandise solely on the basis of physical characteristics and using CV as the basis for FMV when such sales are disqualified due to other reasons.

Saha Thai argues that there is no support in either the statute or case law for petitioners' argument. Saha Thai argues that the statute does not require that the Department first determine which merchandise is such or similar and then determine if sales of that merchandise are contemporaneous.

Saha Thai argues that the preliminary results need not be read as applying section 771(16) of the Tariff Act to determine such or similar merchandise a second time after concluding that certain sales originally determined to be such or similar were made outside the 90/60 window. Rather, Saha Thai asserts, it can just as easily be interpreted as applying section 771(16) only once after excluding merchandise sold outside the 90/60 window.

Additionally, Saha Thai contends that the cases cited by petitioners are not on point. According to Saha Thai, in *AFBs from France* the Department merely determined that it will not search for such or similar merchandise a second time after the identical or most similar merchandise is determined to be below cost. The Department did not address the issue of whether sales outside the 90/60 window could be designated as such or similar merchandise. Additionally, Saha Thai claims that petitioners' reliance on *Cyanuric Acid* is similarly misguided. According to Saha Thai, the Department determined in *Cyanuric Acid* that the sales in dispute were sold in the ordinary course of trade; otherwise, it could not have used them as FMV. Finally, Saha Thai argues that, aside from the fact that *CTVs from Korea* was a preliminary decision, it is not clear in that case that there were other contemporaneous sales of similar models available for comparison. According to Saha Thai, it is conceivable that, after application of the cost test, there were no sales of similar models to compare to the U.S. sales, forcing the Department to resort to CV.

Saha Thai contends that a clearer statement of the Department's policy may be found in *Certain Forged Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 56 FR 5975, 5977 (February 14, 1991), where the Department stated that ''when there were no contemporaneous sales of the most similar home market model to compare to sales of a U.S. model, we examined the other similar models for contemporaneity.'' Saha Thai argues that not only is the Department's methodology in the preliminary determination consistent with the above-cited case, it is also consistent with previous administrative reviews concerning this product.

Department's Position: We disagree with petitioners' argument that by limiting our search for such or similar merchandise to those home market sales made within the contemporaneous 90/60 window, we are inappropriately conditioning the selection of such or similar merchandise on factors other than the physical characteristics of the merchandise.

In accordance with section 773(a)(1) of the Tariff Act, we must compare contemporaneous sales of such or similar merchandise. Accordingly, in making comparisons we must do so based on both the physical characteristics of the merchandise and the timing of the sales, since we are matching sales to sales, and not simply models to models. Thus, the timing of the sales limits the universe from which we make our selection. In contrast, the test for sales below cost is a test applied, when warranted, to the universe of sales selected under section 773(a)(1).

The Department has implemented the contemporaneous 90/60 window in order to fulfill the statutory requirements in section 773(a)(1) of the Tariff Act that FMV be based on the price of contemporaneous sales of such or similar merchandise. *See, Final Results of Antidumping Duty Administrative Review; Certain Valves and Connections, of Brass, for Use in Fire Protection Systems from Italy*, 56 FR 5388 (February 11, 1991).

Therefore, for these final results we will continue to base our selection of such or similar merchandise on the physical characteristics of the merchandise. However, consistent with established Department practice, we will also continue to limit the universe of sales from which we select the comparison model to those sales made during the contemporaneous 90/60 window.

Comment 3: Petitioners argue that the Department erred in making a circumstance-of-sale (COS) adjustment for warranty expenses Saha Thai claims it incurred on U.S. sales. Petitioners contend that Saha Thai failed to provide sufficient evidence to support its characterization of this expense as a warranty expense. Petitioners assert that the evidence on the record suggests that this expense was actually a discount that should be deducted from U.S. price (USP), rather than added to FMV.

Petitioners also argue that Saha Thai's allocation of this expense was faulty because: (1) The expense was allocated over sales made prior to the period of review, and (2) the expense was allocated over all U.S. sales despite the fact that sales-specific data was available.

Saha Thai argues that it provided ample evidence in both its original and supplemental questionnaire responses to substantiate its claim that the expenses in question were *bona fide* warranty expenses. Additionally, Saha Thai argues that the Department incorrectly classified its warranty expenses as direct selling expenses. According to Saha Thai, such expenses should be classified as indirect, and no adjustment should be made to USP since all U.S. sales were purchase price transactions within the meaning of section 772(b) of the Tariff Act.

Saha Thai contends that, because its warranty expense was unanticipated at the time of the sale and has not been repeated since, it should be classified, according to established Department practice, as an indirect selling expense. Additionally, Saha Thai notes that warranty payments made during the POR are normally considered direct expenses only when such payments are indicative of warranty expenses that will likely be incurred later with regard to sales made during the period of review. Saha Thai notes that warranty claims are not anticipated at the time of the sale because the merchandise under review is manufactured to internationally recognized standards.

Saha Thai asserts that, if the Department determines that its reported warranty expenses are direct expenses, it should employ for these final results the allocation methodology used in the preliminary determination. According to Saha Thai, allocating the warranty expenses over all sales during the 1987–92 period provides the best information available for the eventual warranty costs for sales in 1992. In addition, Saha Thai argues that allocating warranty expenses over all of its sales from 1987–1992 avoids the disproportionate allocation of the expenses to the relatively low export volume in 1992.

Department's Position: It is the Department's practice to allow only those expenses related to quality-based complaints to be classified as a warranty expense. *See, Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon From Norway*, 56 FR 7661 (February 25, 1991). Because the record indicates that Saha Thai's payments are in response to a quality-based complaint, we disagree with petitioners that the expense should be classified as a discount, and have continued to classify it as a warranty expense. Additionally, since the warranty expenses incurred by Saha Thai are variable expenses, we have continued to classify them as direct selling expenses.

Furthermore, regarding the proper allocation methodology, since warranty expenses associated with subject merchandise sold during the POR are usually not identifiable until well after the POR, it is the Department's general practice to make a COS adjustment using warranty expenses incurred during the period as the best available information for future warranty claims. *See, Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 12701 (1991). However, where there are special circumstances, the Department has accepted alternative calculation methodologies that provide a reasonable estimate of future warranty expenses associated with sales made during the POR. *See, Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan*, 55 FR 335 (1990). In the instant case, we agree with Saha Thai that allocating its current warranty expenses over the relatively low export volume in this review would likely result in an overstated warranty adjustment. Such an approach would be inappropriate because it would not provide an accurate prediction of the warranty expenses that are likely to be incurred in the future on sales made during the POR. Therefore, we have accepted Saha Thai's methodology of allocating warranty expenses incurred over the past five years over sales made during the past five years as a reasonable estimate of future warranty expenses that will be incurred on sales made during the POR.

Comment 4: Petitioners argue that the Department erred in making a duty drawback adjustment to USP. Petitioners argue that Saha Thai is not entitled to a duty drawback adjustment because it provided no evidence that the drawback it receives is based on duties paid on materials which are suitable for use in those ASTM products exported. Petitioners also argue that if the Department grants the duty drawback adjustment, it should be reduced to a lesser amount than that claimed by Saha Thai because there is evidence that Saha Thai's claimed amount is not representative of the actual duties paid on coil incorporated into the exported pipe.

Saha Thai argues that it has provided adequate information to support its claimed duty drawback adjustment and its method of calculation and that the duty drawback adjustments claimed in the 1987–88 and 1988–89 reviews were granted in full. Additionally, Saha Thai argues that petitioners' analysis of Saha Thai's duty drawback claim is flawed because it failed to account for the fact that Saha Thai sources some of its material inputs from domestic suppliers. This flaw, Saha Thai argues, invalidates the petitioner's argument.

Department's Position: We disagree with petitioners' argument that Saha Thai's reported duty drawback adjustment should be disallowed. Saha Thai provided in its questionnaire response an adequate explanation and demonstration of how it calculated the reported duty drawback adjustment. Additionally, we agree with Saha Thai that petitioners' estimate of its duty drawback appears flawed because it failed to account for the fact that Saha Thai sources some of its material inputs from domestic suppliers. Furthermore, because there is no information on the record to indicate that the drawback Saha Thai receives on duties paid on materials used in the production of ASTM products differs from other materials, there is no basis to deny Saha Thai's duty drawback adjustment on such grounds.

Comment 5: Petitioners and Saha Thai agree that the Department misread the computer data in the field OCNFRTP (ocean freight). Petitioners request that this error be corrected for these final results of review.

Department's Position: We agree that we misread the computer data in the OCNFRTP field, and have corrected this error for these final results of review.

Comment 6: Petitioners assert that Saha Thai incorrectly allocated its home market freight expenses and therefore no delivery charges should be deducted from the home market price. According to petitioners, Saha Thai's allocation methodology is flawed because it assumes that each sale, regardless of the delivery location, has the same inland freight costs. Additionally, petitioners argue that the methodology used to calculate freight expenses assumes that pipe and steel sheets have the same cost per ton for delivery. Finally, petitioners assert that Saha Thai has not indicated whether it delivers its own products or hires outside parties to deliver pipe. Petitioners argue that if an outside delivery service is used, there is no evidence on the record of the tariffs of the outside company and hence no basis for making the adjustment.

Saha Thai asserts that, in its supplemental response, it provided a complete explanation as to why calculation of an average cost per ton is accurate. Additionally, Saha Thai notes that it clearly stated in its supplemental response that it uses an outside delivery service.

Department's Position: Saha Thai stated in its November 15, 1993, supplemental response that it ''engages an outside delivery service at a fixed fee per truck per day, plus an overcharge when the weight loaded in the truck exceeds a specified maximum'' (p.6). We have determined that, based on the manner in which Saha Thai incurs its home market freight expenses, an allocation methodology based on weight is a reasonable calculation of Saha Thai's per-unit freight cost. Therefore, we have accepted Saha Thai's reported home market freight expenses for these final results.

Comment 7: Petitioners contend that Saha Thai's reported home market packing costs have not been properly allocated. According to petitioners, the allocation is incorrect because it does not account for the different number of pieces per ton and the different number of tons per bundle. Petitioners argue that packing costs should be allocated by the number of pieces packed since each size of pipe has a different number of pieces per ton, requiring a different amount of handling, materials and overhead expenses for packing.

Petitioners also argue that Saha Thai's packing labor allocation methodology fails to account for the fact that black, threaded and coupled pipe and all galvanized pipe for export receives plastic packing, while home market sales do not. As a result, petitioners argue, total packing labor costs are over-allocated to home market sales. Finally, petitioners contend that the preliminary results fail to account for any overhead in packing expenses.

Saha Thai argues that its allocation of packing costs is reasonable and that petitioners' comments raise issues that are normally addressed in a deficiency questionnaire or at verification. Additionally, Saha Thai notes that, with the exception of wrapping each end of pipe for export with plastic wrap, all three kinds of pipe (export black, export galvanized, and domestic galvanized) receive the same type of packing.

Department's Position: Saha Thai's methodology for calculating its packing expenses is consistent with the methodology verified and accepted by the Department in previous reviews. Furthermore, the record in this review does not indicate that Saha Thai's packing allocation methodology distorts our antidumping calculations. Therefore, we have accepted Saha Thai's reported packing expenses for these final results.

Comment 8: Petitioners argue that the annual coil purchase quantity that Saha Thai reported in its November 15, 1993, deficiency response at exhibit 12A is inconsistent with the monthly coil purchase quantities Saha Thai reported elsewhere in its deficiency response.

Because of this discrepancy, petitioners argue that the Department should reject Saha Thai's cost calculation, or, in the alternative, recalculate Saha Thai's coil costs based on the monthly purchase data.

Saha Thai agrees that there is an error in exhibit 12A of its deficiency response, but argues it was a clerical error committed while preparing exhibit 12A and not an indication of inconsistencies in its accounting data. Saha Thai further argues that the error in exhibit 12A is easily correctable.

Department's Position: The information on the record indicates that Saha Thai committed a clerical error when compiling the annual coil purchase amounts in exhibit 12A of its deficiency response. Therefore, for these final results, we have recalculated Saha Thai's annual coil purchase amounts using the 1992 monthly coil purchase amounts found in exhibit 11A of its November 13, 1993 deficiency response.

Comment 9: Petitioners argue that the Department erred in allowing a credit to Saha Thai's material costs for revenue derived from the sale of flat bar. Petitioners argue that Saha Thai has presented no new information that should cause the Department to change its determination in the most recent administrative review of Saha Thai that flat bar is not a by-product of the manufacture of pipe and tube, but is instead a product resulting from further manufacture of steel scrap. *See Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 57 FR 38668, 38669, (August 26, 1992). Therefore, petitioners argue, the Department should allow a credit only for revenue derived from the sale of steel scrap, and not from the sale of flat bar.

Saha Thai acknowledges that the Department denied the flat bar credit in the 88–89 review, but argues that it should accept it in this review because flat bar qualifies as a by-product under the criteria articulated in *Titanium Sponge from Japan*, 51 FR 45495, 45496 (December 19, 1986), *Frozen Concentrated Orange Juice from Brazil, Final Determination of Sales at Less than Fair Value*, 52 FR 8324 (March 17, 1987), and *Fall Harvested White Potatoes from Canada, Final Determination of Sales at Less than Fair Value*, 48 FR 51660, 51673–74 (November 10, 1983). Saha Thai argues that the Department should consider the fact that, during the administrative review, it was unable to recover its costs through its sales of flat bar. In addition, its sales of flat bar were minuscule in comparison to its sales of pipe.

Finally, Saha Thai notes that it included in its submitted pipe costs the costs of coil used to produce flat bar. Therefore, Saha Thai argues, if the Department finds that flat bar is a co-product and declines to offset its pipe production costs for revenues realized on the sale of flat bar, it must remove the coil costs attributable to flat bar from its reported coil cost for the production of pipe and tube.

Department's Position: We agree with petitioners. The Department determined in the 1987–88 and 1988–89 administrative reviews that flat bar sold by Saha Thai is properly considered a co-product, not a by-product, of the steel pipe production process. Further, in response to the remand order issued by the CIT pursuant to *Saha Thai Steel Pipe Co., Ltd.* v. *United States*, Slip Op. 95–21 (CIT February 14, 1995), the Department submitted a redetermination maintaining that flat bar is properly considered a co-product. In that redetermination the Department explained that flat bar produced by Saha Thai is properly considered a co-product because: (1) Saha Thai accounts for flat bar as a separate finished product; (2) the production of flat bar is not an unavoidable consequence of producing the subject merchandise; (3) Saha Thai intentionally controls the production of flat bar and markets it as a separate end product; (4) significant further processing of the scrap is necessary for sale as flat bar, and; (5) flat bar and the subject merchandise are produced on separate machines. Because the facts in this review do not differ from the facts in the previous reviews, we have determined, consistent with the previous reviews, to treat the production of flat bar as a co-product for these final results. Therefore we have corrected Saha Thai's reported coil costs by adjusting the yield loss and by-product credit attributable to flat bar.

Comment 10: Petitioners argue that the Department should not allow Saha Thai to deduct the weight of zinc and coupling from the weight of pipe when calculating coil costs. According to petitioners, the record demonstrates that the weight of zinc and coupling is not included in the reported weight of the pipe in the first place, therefore deducting an amount for zinc and coupling results in an understatement of the true amount of coil consumed in the production of galvanized or threaded and coupled pipe.

According to petitioners, Saha Thai submitted a single unit weight for each size of pipe, without differentiation for being black plain-end, galvanized, or coupled and threaded. Petitioners assert that this is because the unit weight is based on the pipe's weight at the forming stage when all pipe is black plain-end. According to petitioners, the steel consumed in producing black plain-end, galvanized, or threaded and coupled pipe weighs exactly the same. Therefore, petitioners contend, any further finishing such as galvanization and threading and coupling represents extra weight, above the weight of the black plain-end pipe recorded in Saha Thai's records. Petitioners request that for these final results of review the Department deny Saha Thai an adjustment for zinc and coupling weight and base the cost of production (COP) and CV calculations on unadjusted coil cost data.

Saha Thai argues that, consistent with previous administrative reviews, the Department should make an adjustment to coil costs for the weight of zinc and coupling. Saha Thai argues that its coil costs are computed on an actual weight basis because it purchases coil on an actual weight basis. Saha Thai contends that in building up the cost per ton on an actual weight basis, it is necessary to take account of the fact that a portion of an actual ton of galvanized, or coupled and threaded pipe is attributable to zinc coating and/or coupling. Saha Thai asserts that in order to identify the amount of coil in an actual ton of pipe it is necessary to first remove from the total actual weight any amounts attributable to zinc and coupling.

Saha Thai further explains that its coupling weight adjustment is made entirely on a theoretical basis. According to Saha Thai, it takes into account the fact that in one theoretical weight ton of threaded and coupled pipe a portion of the ton is attributable to the weight of the coupling. For example, due to the weight of coupling, the standard theoretical weight of a two inch plain-end pipe is less than the standard theoretical weight of a two inch threaded and coupled pipe. Therefore, Saha Thai argues, the calculation of the COP must take into account the fact that, in one theoretical ton of threaded and coupled pipe, there is less than one ton of coil.

Department's Position: We disagree with petitioners. It is necessary to adjust the coil costs to produce a theoretical ton of black, plain-end pipe when calculating the coil costs to produce a theoretical ton of galvanized and/or threaded and coupled pipe. This is because, unlike black, plain-end pipe, a portion of the weight of a ton of galvanized and/or threaded and coupled pipe is attributable to the weight of zinc and coupling. Therefore, for these final results we have continued to accept Saha Thai's downward adjustment to

coil costs used to produce galvanized and/or threaded and coupled pipe.

Comment 11: Petitioners argue that even if the Department determines that a zinc adjustment is valid, it still must deny such an adjustment because the methodology used by Saha Thai grossly overstates the weight of zinc on the pipe. According to petitioners, Saha Thai calculated the weight of zinc on the pipe by allocating total net zinc consumed over the entire surface area galvanized. Petitioners assert that it is clear from Saha Thai's reported zinc unit cost calculation that while the reported zinc consumed is net of excess zinc termed dross and ash, it fails to net out a significant quantity of excess zinc, known in the industry as coarse and fine dust. Petitioners argue that Saha Thai has completely ignored this substantial source of zinc loss and thus overstated the amount of zinc on the pipe and understated the claimed coil weight.

Petitioners claim that its argument that Saha Thai's zinc weight claim is overstated is supported by Saha Thai's own records which indicate that it coats both ASTM and BS pipe with the same amount of zinc. Petitioners argue that it is not credible that Saha Thai would coat both ASTM and BS pipe with the same thickness of zinc, given the wide difference in the two industry standards, the high cost of zinc, and the fact that Saha Thai can easily control the amount of zinc on the pipe. Petitioners assert that comparison of zinc usage by an efficient domestic producer of galvanized standard pipe to Saha Thai's reported zinc usage demonstrates that Saha Thai's calculation of zinc use produces results that are clearly excessive. Petitioners assert that the Department should use as the best information available (BIA) within the meaning of section 776(c) of the Tariff Act, the standard weight of zinc as set by ASTM and BS product specifications.

Saha Thai contends that petitioners' arguments are unsupported by the record. Saha Thai questions the usefulness of petitioners' analysis of a domestic producer's zinc recovery rates without evidence that the recovery rates experienced by the domestic producer are comparable to Saha Thai's experience. Saha Thai also argues that petitioners' claim that Saha Thai does not recover zinc dust as a by-product is unsupported by the record. According to Saha Thai, there is no proof that Saha Thai does not include zinc dust in what it calls ash. Finally, Saha Thai does not dispute the fact that its zinc coating weight exceeds the standard coating weight, and asserts that petitioners claims regarding the credibility of its zinc usage are more properly addressed through a deficiency questionnaire or at verification.

Department's Position: We disagree with petitioners' argument that the record indicates that the methodology used by Saha Thai grossly overstates the weight of zinc on the pipe. The fact that Saha Thai's zinc recovery rates are not comparable to those of a domestic producer does not serve as the basis for disregarding Saha Thai's methodology and resorting to BIA. Furthermore, the Department verified and accepted the same methodology used by Saha Thai to report zinc costs in the 1987–88 administrative review. *See, Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 56 FR 58355 (November 19, 1991). Therefore, we have continued to accept Saha Thai's reported zinc costs for these final results of review.

Comment 12: Petitioners argue that Saha Thai improperly deducted the interest expenses on coil purchases from its cost of materials and included them in the pool of selling, general and administrative (SG&A) expenses. Petitioners argue that these expenses are part of the acquisition cost of the coil and are not a general expense of the company as claimed by Saha Thai.

Petitioners claim that the Department's practice is to calculate the COP based on generally accepted accounting principles (GAAP) in the home market as long as these principles do not significantly distort the firm's financial position or actual costs. According to petitioners, the record indicates that GAAP in the home market requires that interest expenses on Saha Thai's coil purchases be allocated to the cost of manufacture (COM), not SG&A. While petitioners acknowledge that the Department allowed financing charges to be classified as general expenses in the original investigation, they argue that because such a finding does not comport with the practice of basing cost methodology on the GAAP of the home market, it must be ignored. Additionally, petitioners assert that the finding in the original investigation does not control in this case because the facts on the record indicate that these interest expenses are not a fungible expense but rather are an integral part of the coil price and thus are tied directly to the coil cost.

Saha Thai asserts that because reliance on home market GAAP would significantly reduce its SG&A expenses and therefore distort its actual costs, the Department should remain consistent with the original investigation and allow it to classify financing costs as general expenses. Saha Thai argues that had it chosen to finance its purchases of coil through a bank or some third party the interest expenses would have automatically been included in SG&A. The fact that financing in this instance was received from a supplier does not change its character from interest expense into raw material costs. According to Saha Thai, it is still a financial cost associated with paying its suppliers on other than a sight basis, and as such, a general expense of the corporation. Saha Thai claims that petitioners' arguments fail to distinguish this review from the original investigation and that the financing is fungible in the sense that obtaining seller financing relieves it of the obligation to secure financing elsewhere.

Department's Position: We disagree with petitioners. We consider the cost of raw materials to be the price reflected in the supplier's invoice for those materials. Any financing charges itemized on the supplier's invoice are properly regarded as interest expenses, not material costs. *See, Oil Country Tubular Goods From Israel; Final Results of Antidumping Duty Administrative Review*, 57 FR 1140 (April 3, 1992). We consider the expenses Saha Thai incurs to finance its material purchases through its supplier to be fungible and, therefore, a general expense of operating the company. *See, Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less Than Fair Value*, 51 FR 3384 (January 27, 1986). Therefore we have continued to classify Saha Thai's interest expenses as SG&A expenses for these final results of review.

Comment 13: Petitioners argue that Saha Thai is not entitled to an adjustment to coil costs for alleged differences between actual and theoretical weights of pipe. Petitioners contend that if the Department determines that such an adjustment is appropriate, it must be recalculated on a product-by-product basis in order to avoid distortions caused by averaging.

Petitioners argue that Saha Thai's adjustment is distorted because it based the actual pipe weight used in the adjustment calculation on the nominal invoiced thickness of the coil rather than the actual scale weight of the coil consumed to produce the pipe. Petitioners also argue that Saha Thai's application of a single average adjustment factor across all products should be rejected because it is clear from the record that: (1) Saha Thai could have provided the factor on a

product-by-product basis, and (2) the difference between Saha Thai's reported actual and theoretical pipe weights varies greatly from product to product and size to size. Petitioners further contend that Saha Thai's methodology does not account for build-up in the wall thickness of the coil that occurs in the production process. Finally petitioners allege that many of Saha Thai's arithmetic calculations of actual and theoretical weights used in the adjustment calculation are incorrect.

Saha Thai responds that since home market and U.S. prices are divided by theoretical weights and coil costs are initially calculated on an actual weight basis, an adjustment must be made to convert coil costs to a theoretical weight basis. Saha Thai argues that it calculated the actual weight of the coil by multiplying the thickness, width and length of the coil by a factor that represents the weight of the steel per cubic meter. Saha Thai contends that this is the standard method in the steel business of calculating the weight of a coil. Saha Thai contends that there is no evidence that it used nominal thicknesses as opposed to actual thicknesses in making its calculation. Saha Thai contends further that, even if it did use nominal thicknesses, there is no evidence on the record to support petitioners claim that such a methodology would result in variations that would have a meaningful effect on the calculation. Finally, Saha Thai asserts that the use of average variances is an accepted practice in cost accounting and the Department did not request that it submit more detailed calculations. Saha Thai contends that petitioners' request for a product-by-product calculation is simply aimed at increasing the burden on respondent.

Department's Position: We disagree with petitioners' argument that Saha Thai is not entitled to a theoretical weight adjustment. Since Saha Thai's U.S. and home market prices are reported on a theoretical weight basis, it is necessary to convert Saha Thai's coil costs, which are initially calculated on an actual weight basis, to a theoretical weight basis. Furthermore, while we acknowledge that the actual thickness of the steel coils used in production may be different than the nominal thickness, within allowable tolerances, and that the production process may have an effect on the thickness of the pipe, there is no information on the record to indicate that these calculations necessarily understate the actual weight of the pipe, and thus the cost. Absent evidence that the calculation methodology distorts the dumping calculation, we will not disregard Saha Thai's approach and resort to BIA. *See, Pipe and Tube from Korea.* However, we agree with petitioners that the use of a single average adjustment factor across all products does not provide an accurate reflection of the weight variances. Therefore, for these final results, we have recalculated Saha Thai's reported material costs using a grade-specific theoretical weight adjustment (corrected for any computational errors).

Comment 14: Petitioners argue that Saha Thai has improperly included value-added taxes (VAT) paid on the purchases of raw material inputs and variable overhead items in the calculation of SG&A. Petitioners argue that since such expenses are incurred directly in relation to production, it is clearly not an SG&A expense and should be included in the calculation of the cost of manufacturing.

Petitioners also assert that Saha Thai's improper classification of VAT taxes also results in the Department having no accurate method to determine difference in merchandise adjustments from Saha Thai's reported variable cost information. Petitioners suggest that, if the Department does not reject Saha Thai's submitted cost data, it must increase the reported cost of manufacture and difference in merchandise data to account for the VAT taxes and decrease the reported SG&A expenses by the same amount.

Saha Thai responds that it properly characterized VAT as an SG&A expense. Saha Thai explains that the net VAT it pays to the government is equal to the excess of the amount of VAT collected from customers over the amount of VAT paid to suppliers. Thus Saha Thai claims that the VAT is not a tax on raw materials, it is a tax on the value added by Saha-Thai's manufacturing operations and therefore does not belong in the cost of goods sold or the cost of manufacturing.

Department's Position: We agree with Saha Thai that VAT is a tax on the value added by its manufacturing operations. For example, if a company buys materials for $100, adds value to those materials and sells them for $120 in a country with a VAT rate of ten percent, that company would pay ten dollars VAT on its material purchases and collect $12 VAT on its sales. The difference of $2 represents the tax on the value-added operations of the company. Furthermore, the company would be required to pay the $2 difference to the government. Due to this fact, there is no net VAT expense incurred as all VAT paid to the government is the difference between VAT payments for raw materials and VAT collections on sales. Therefore, no VAT has been included in the calculation of COP for these final results.

Comment 15: Petitioners claim that Saha Thai should have allocated varnishing material costs by surface area rather than by tonnage produced. Petitioners claim that since the surface area per ton varies with the size of the pipe being varnished, only an allocation by surface area accurately reflects Saha Thai's varnishing material costs. Petitioners claim that Saha Thai has the information necessary to perform such an allocation and should have done so in its response.

Saha Thai claims that it already reallocated its varnishing material expenses by surface area in its supplemental response. Saha Thai explains that while it failed to note this change in the narrative text, it was included in exhibit 10 of the supplemental response, the corresponding cost build-ups and in a subsequent letter to the Department dated November 24, 1993.

Department's Position: We agree with petitioners that varnishing expenses should be allocated according to surface area. However, because Saha Thai allocated varnishing expenses in this manner in its supplemental response, there is no need to recalculate varnishing expenses for these final results.

Comment 16: Petitioners claim that Saha Thai failed to include certain variable production costs on the computer tape it submitted and that the Department did not input the corrected values for the preliminary results. Petitioners argue that, because it is not the Department's responsibility to manually input data that should have been submitted by the respondent in the first place, and because there are numerous other deficiencies in the submitted cost data, the Department should reject the entire cost response and base these final results on BIA. At the very least, petitioners request that the Department correct Saha Thai's costs for these final results.

Saha Thai acknowledges that certain costs were excluded from the final cost build-up submitted to the Department and notes that the Department was informed of this inadvertent omission in a letter filed shortly after its supplemental response. Saha Thai argues that, since it immediately offered to correct its response, and the information necessary to make the correction is already on the record, its cost response should not be rejected and the Department should input the corrected data for these final results.

Department's Position: We disagree with petitioners that we should base these final results on BIA. Because Saha Thai immediately informed the Department of the cost calculation error in its supplemental response, and correction of the error does not place an undue burden on the Department, we have corrected the error for these final results by including those costs that were originally excluded from Saha Thai's original cost build-up.

Comment 17: In addition to their comments regarding the treatment of VAT and interest expenses on material purchases, petitioners claim that Saha Thai's reported SG&A expenses used in the calculation of COP and CV have been allocated incorrectly. According to petitioners, a portion of Saha Thai's reported SG&A expenses consist of expenses incurred only on home market sales and thus are improperly allocated over the cost of goods for both home market and export sales. Petitioners also claim that the cost of goods sold over which SG&A expenses are allocated should not be increased by the reverse drawback credit since, by definition, drawback is received only on exported pipe. Petitioners contend that due to the numerous deficiencies in Saha Thai's SG&A calculation, the Department must either reject the cost and CV information in its entirety or apply BIA to the SG&A calculation.

Saha Thai claims that petitioners arguments regarding the calculation of SG&A are meritless. Saha Thai asserts that petitioner has offered no proof to support the claim that it has improperly allocated SG&A expenses. Additionally, Saha Thai argues that since the product-specific COM to which the SG&A factor is applied includes full import duties, it is proper to add those duties to the cost of goods sold (COGS) used in the denominator of the SG&A calculation. Saha Thai argues that the fact that duties drawn back relate to production for export, not for domestic consumption, is irrelevant. What is important, according to Saha Thai, is that the denominator used in the calculation of the SG&A factor corresponds to the build-up of the product COM to which the SG&A factor will be applied.

Department's Position: For an explanation of our treatment of VAT and interest expenses in calculating COP for these final results, please refer to our response to *Comment 14* and *Comment 12* respectively. We disagree with petitioners assertion that Saha Thai's allocation of its SG&A expenses results in an understated SG&A expense factor. Saha Thai allocated SG&A expenses over the cost of sales to which they applied. Furthermore, because the COM to which the SG&A factor is applied is duty inclusive, it is proper, when calculating COP, to include such duties in the COGS.

Comment 18: Petitioner argues that the Department should not have removed from the home market data base any sales for which Saha Thai failed to submit cost information. Petitioners argue that rather than remove such sales from the dumping analysis, which potentially rewards a respondent for failure to provide information, any matches to such sales should be based on BIA.

Saha Thai acknowledges that it did not provide cost information for one home market sale. Saha Thai also notes that the model for which cost data was missing was not sold in the United States and was not used as FMV for any of the Department's price comparisons.

Department's Position: We agree with petitioners and have not removed any sales from the home market data base for which Saha Thai failed to submit cost information. However, since no U.S. sales matched to such sales, it was not necessary to calculate a margin using BIA.

Comment 19: Petitioners claim that a comparison of Saha Thai's reported profit levels on the subject merchandise under review compared to the profitability reported in its financial statement clearly indicates that Saha Thai's reported costs for subject merchandise are inaccurate. Petitioners claim that in a review where no verification is performed and the Department must base its determination solely on information on the record, a discrepancy of the type demonstrated by the petitioners' analysis should be the basis for completely rejecting the cost response.

Saha Thai asserts that petitioners claims are false and that there are three significant problems with petitioners' analysis. According to Saha Thai: (1) Petitioners failed to take account of the effect of drawback on export profits; (2) petitioners applied the incorrect SG&A ratio to export sales in calculating net export profits; and (3) petitioners failed to deduct warranty expenses from export profits. Saha Thai claims that, when these corrections are made, petitioners' calculations yield an overall profit that is within one half of one percent of the net profit shown in Saha Thai's 1992 financial statement.

Department's Position: We have concluded that, for the reasons stated in Saha Thai's comment, petitioners' analysis is flawed and Saha Thai's reported profit levels are comparable to the profitability reported in its financial statements. While it has been necessary to make certain corrections to Saha Thai's cost response, we disagree with petitioners that the record indicates discrepancies that warrant its complete rejection. Therefore, with the exception of corrections noted in these final results, we have used Saha Thai's cost response in our calculations.

Comment 20: Saha Thai contends that, in cases such as this, where there are parallel antidumping and countervailing duty proceedings, USP, and thus any dumping margins, must be determined by making an adjustment pursuant to section 772(d)(1)(D) of the Tariff Act for countervailing duties imposed. Accordingly, Saha Thai argues that the cash deposit rate, which is based on the dumping margin of U.S. sales during the period of review, must also reflect the adjustment for countervailing duties imposed on the merchandise sold during the period. Saha Thai notes that the preliminary results provide for a prospective adjustment to the final liquidation rates by the U.S. Customs Service to account for countervailing duties that have yet to be determined. However, Saha Thai argues that there are two problems with the Department's proposed solution. First, Saha Thai claims that it will result in the establishment of an antidumping duty cash deposit rate that exceeds the dumping margin found on sales during the administrative review. Second, it improperly delegates to the U.S. Customs Service responsibility for calculating the final amount of the duty and deprives Saha Thai of the opportunity to review the final duty calculations for accuracy. Saha Thai argues that if the Department is to act in accordance with the statute it has two alternatives. The Department can either expedite the parallel countervailing duty review and link the two reviews so that their final results are published at the same time, or it can adjust the antidumping cash deposit rate by the amount of countervailing duties to offset export subsidies imposed in the most recent final countervailing duty administrative review.

Petitioners respond that the statute and the Department's regulations provide that USP shall be increased by the amount of any countervailing duty *imposed* on the merchandise to offset an export subsidy (772(d)(1)(D) of the Tariff Act and 19 CFR 353.41(d)(iv)). Arguing that assessed and imposed are synonymous terms, petitioners contend that, since no countervailing duties have been assessed on the subject merchandise, Saha Thai is incorrect in asserting that an adjustment is required by the statute. Petitioners support the

Department's preliminary decision to delay liquidation of entries until the countervailing duty review is completed and instruct the U.S. Customs Service to reduce antidumping duties collected by the amount of countervailing duties to the extent such duties are based on export subsidies. According to petitioners, the arithmetic task of reducing antidumping duties by the amount of countervailing duties is a simple ministerial act well within the U.S. Customs Services' authority and is not an improper delegation of authority that denies significant rights to Saha Thai.

Department's Position: Section 772(d)(1)(D) of the Tariff Act authorizes the Department to make an upward adjustment to USP for ''the amount of any countervailing duty imposed on the merchandise* * *to offset an export subsidy.'' The Department has interpreted this language to mean that it will make an upward adjustment to USP only if the U.S. Customs Service has actually assessed countervailing duties on the U.S. sales examined in an administrative review. *See, Pipe and Tube from Turkey; Final Results of Antidumping Administrative Review*, 53 FR 39632 (October 11, 1988). *See also, Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989). The CIT has endorsed the Department's interpretation. *See, Serampore Industries Pvt., Ltd.* v. *United States*, 65 F. Supp. 1354 (1987).

For assessment of antidumping duties on merchandise subject to this review, we will increase the USP by the amount of assessed countervailing duties attributable to the export subsidies found in the current countervailing duty reviews. We will calculate the potential uncollected dumping duties (PUDD) using this increased USP. *See, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992).

This administrative review covers the period March 1, 1992 through February 28, 1993. The Department recently completed the corresponding countervailing duty administrative review covering the period January 1, 1992, through December 31, 1992. *See, Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Countervailing Duty Administrative Review*, 60 FR 33791 (June 29, 1995). However, the countervailing duty review for the period January 1, 1993, through December 31, 1993, has not yet been completed. Therefore, there is not yet a countervailing duty assessment rate for the last two months of this review period (January 1, 1993, through February 28, 1993) by which to adjust the assessment of antidumping duties to account for export subsidies. However, liquidation of entries during those two months is suspended until the final results of the countervailing duty review. Therefore, we will not forward to the U.S. Customs Service assessment rates for entries of the subject merchandise from Thailand during that two month period until issuance of the final results of the next countervailing duty review.

The antidumping duty cash deposit rate established in this review will be reduced by 0.73 percent which is Saha Thai's current countervailing duty cash deposit rate attributable to export subsidies. Upon completion of the next countervailing duty review, the antidumping duty cash deposit rate for Saha Thai will be adjusted by the portion of the countervailing duty cash deposit rate established in that review that is attributable to export subsidies.

We disagree with Saha Thai that our instructions to the U.S. Customs Service regarding the proper assessment of antidumping duties and the collection of cash deposits in instances where there is a concurrent countervailing duty review is an improper delegation of authority and prevents interested parties from participating fully in the process. The Department's instructions to the Customs Service are nothing more than direction for the application of rates established in antidumping and countervailing duty proceedings in which Saha Thai was given the opportunity to fully participate. Our specific instructions to the U.S. Customs Service regarding the collection and assessment of duties reflect the decisions made by the Department pursuant to its statutory and regulatory authority and thus cannot be construed as an improper delegation of the Department's authority.

Comment 21: Saha Thai contends that the Department should not have deducted inland freight expenses from the home market price it compared to COP to determine sales below cost. According to Saha Thai, both its original and supplemental questionnaire responses demonstrate that it included freight expenses in the calculation of the SG&A portion of the COP. Therefore such expenses should remain in the home market price used to determine sales below cost.

Petitioners claim that Saha Thai's questionnaire responses fail to identify any freight expenses included in the calculation of SG&A expenses. Therefore, petitioners contend that the Department should make no adjustments for freight expenses to the home market price used to determine sales below cost.

Department's Position: We agree with Saha Thai. Saha Thai's questionnaire response indicates that freight expenses were included in the reported SG&A expenses used to calculate cost of production. Therefore, for these final results, we have not deducted freight expenses from the home market price used in the test for sales below cost.

Comment 22: Saha Thai suggests that, because the Department used fiscal-year average costs for purposes of the cost test, it should consider also using fiscal-year averages for the purposes of the difmer adjustment rather than quarterly average costs.

Department's Position: We agree with Saha Thai and have used fiscal-year average cost data to adjust for differences in merchandise for these final results.

Comment 23: Saha Thai argues that the Department should apply its test pursuant to section 773(b) of the Tariff Act to determine whether below cost sales were made in substantial quantities on an aggregate rather than a model-specific basis. Although Saha Thai notes several cases where the Department administered the cost test on an aggregate basis, Saha Thai acknowledges that in recent cases the Department has changed its practice and administered the cost test on a model-specific basis. Saha Thai argues that there are several problems with the Department's change in policy.

First, Saha Thai argues that the Department failed to apply its new policy consistently in every case that followed the Department's use of a model-specific cost test in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26255 (June 27, 1990).

Second, Saha Thai argues that the test is not consistent with the statutory requirement that below-cost sales be ''substantial'' and made ''over an extended period of time'' in order to be disregarded in the determination of FMV. According to Saha Thai, application of the cost test on a model-specific basis can result in disregarding below cost sales of certain models even when the amount of below cost sales of the model in question occurred during only one quarter and is minuscule in

relation to all such or similar merchandise sold during the POR.

Third, Saha Thai argues that the Department has failed to explain adequately its deviation from prior practice or why the model-specific cost test better implements the statutory mandate. According to Saha Thai, the fact that the Department's price-to-price comparisons focus on model matches is irrelevant. Saha Thai argues that because all home market sales are used to determine FMV, application of the cost test to all such sales on an aggregate basis would satisfy the requirement that the test be focused on sales used in determining FMV. According to Saha Thai, in this case nearly all models sold in the home market could be compared to all models sold in the United States. Accordingly, Saha Thai argues that it would be more appropriate to conduct the cost test on an aggregate basis since potential price-to-price comparisons are not limited to sales of specific models but rather extend to the entire group of such or similar merchandise.

Petitioners argue that a December 1992 Policy Bulletin issued by the Department recognized that its varied approach to administering the cost test created an inconsistent and unpredictable practice. According to petitioners, the Department determined in its Policy Bulletin that application of the test on a model specific-basis was the better approach to implementing the statute. Petitioners claim that any subsequent final results that failed to conform to the policy bulletin were incorrectly issued.

Department's Position: We disagree with Saha Thai's position that the cost test should be administered on an aggregate rather than model-specific basis. As stated in our *Policy Bulletin* dated December 15, 1992, Section 773(b) of the Tariff Act directs us to disregard below-cost sales in calculating FMV. Because FMV is model-specific, employing a model-specific methodology is the most appropriate approach to determine if sales below cost were made in substantial quantities. *See, Sweaters Wholly or in Chief Weight of Man-Made Fiber From Korea; Final Results of Antidumping Duty Administrative Review*, 59 FR 17513 (April 13, 1994). If we were to adopt Saha Thai's position and administer the cost test on an aggregate level, we would risk comparing U.S. sales to model-specific FMVs where all sales of the model are below cost as long as total home market sales below cost remained under 10 percent. The statute did not intend to allow for such comparisons. For these reasons, we have rejected using an aggregate cost test and have continued to test individual models for sales below cost for these final results.

Comment 24: Saha Thai argues that the Department's regulations (19 CFR 353.60), require that the official exchange rates certified by the Federal Reserve Bank be used in the Department's antidumping calculations. Saha Thai argues that the exchange rates used in the preliminary determination do not conform to the quarterly exchange rates published by the Federal Reserve Bank. Saha Thai requests that the Department use the Federal reserve Bank's quarterly exchange rates for the final results of review.

Department's Position: Contrary to Saha Thai's assertion, we did use the quarterly exchange rates, certified by the Federal Reserve Bank, and supplied to us by the U.S. Customs Service for the preliminary results. Therefore, we will continue to use the same rates for these final results.

Final Results of Review

Based on our analysis of the comments received, we determine that a margin of 18.04 percent exists for Saha Thai for the period March 1, 1992, through February 28, 1993.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of pipe and tube from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for Saha Thai will be 18.04 percent; (2) for previously investigated companies not named above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate established in the final notice of the less-than-fair-value (LTFV) investigation of this case, in accordance with the CIT's decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) and *Federal Mogul Corporation and Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993). The all others rate is 15.67 percent. These deposit requirements when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1993).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–623 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers From Korea; Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Anticircumvention Inquiry.

SUMMARY: On the basis of an application filed with the Department of Commerce (the Department) on August 11, 1995, we are initiating an anticircumvention inquiry to determine whether imports of color television receivers (CTVs) from Mexico and Thailand are circumventing the antidumping duty order on color television receivers from the Republic of Korea (49 FR 18336, April 30, 1984).

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or David Genovese, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–3058/4697.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department received an application filed by the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions), requesting that the Department conduct an anticircumvention inquiry on the antidumping duty order on CTVs from Korea pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Tariff Act). The Unions allege that Samsung Electronics Co., (Samsung), L.G. Electronics Inc., ((LGE) formerly Lucky Goldstar Co., Ltd.), and Daewoo Electronics Co., Ltd. (Samsung), are circumventing the order by shipping Korean-origin color picture tubes (CPTs), printed circuit boards (PCBs), color television kits (TV kits), chassis, and other materials, parts, and components to plants operated by related parties in Mexico. These parts are then assembled in Mexico into CTVs and shipped to the United States free of any antidumping duties. Additionally, the Unions allege that Samsung is circumventing the order by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the United States where they enter free of any antidumping duties.

Initiation of Anticircumvention Proceeding

In accordance with section 781(b) of the Tariff Act, the Department may find circumvention of an order when the following four conditions are met:

(1) The merchandise imported into the United States is of the same class or kind as the merchandise that is subject to the order.

(2) Before importation into the United States, the merchandise is completed or assembled from merchandise which is subject to the order or is produced in the foreign country to which the order applies.

(3) The process of assembly or completion is minor or insignificant.

(4) The value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States.

In order to determine whether a circumvention inquiry is warranted, we evaluated the publicly available evidence submitted by the Unions using each of the criteria listed above. We have concluded that the evidence submitted is sufficient to warrant a circumvention inquiry. Each criteria is separately addressed below.

(1) Is the Merchandise Imported Into the United States of the Same Class or Kind as the Merchandise That is Subject to the Order?

The Unions assert that the merchandise completed or assembled in Mexico and Thailand and imported into the United States is subject to the order which covers all CTVs, complete or incomplete, regardless of HTS classification. With regard to Samsung's shipments of CTVs from Thailand to the United States, the Unions have concluded that data taken from ship manifests indicate that an estimated 243,062 CTVs were shipped by Samsung from Thailand to the United States during the period January 1994 through March 1995. The Unions have not been able to estimate the number of CTVs that respondents (Samsung, Goldstar, and Daewoo) are exporting to the United States from Mexico because they are transported by truck or rail and are not covered by automated manifest data. However, the Unions have concluded that a clear indication that respondents are supplying the U.S. market with CTVs from Mexico is the fact that respondents have not lost U.S. market share despite the fact that they have terminated CTV assembly in the United States and have dramatically reduced the amount of direct CTV shipments from Korea.

(2) Before Importation Into the United States, is the Merchandise Completed or Assembled From Merchandise Which is Subject to the Order or is Produced in the Foreign Country to Which the Order Applies?

The Unions have supported their assertion that the merchandise completed or assembled in Mexico is of Korean origin by submitting data taken from ship manifests that indicate that respondents are shipping CPTs, CTV kits, chassis, tuners, deflection yokes, flyback transformers, or unspecified CTV parts of Korean origin to their affiliated companies in Mexico. The Unions do not have access to manifest or bill of lading information on shipments by Samsung of Korean origin CTV parts and subassemblies to Thailand. However, the Unions contend that the overall patterns of trade between Korea, Thailand and the United States indicate a dramatic increase in the overall amount of CTV parts exported from Korea to Thailand and a corresponding increase in the amount of CTVs imported into the United States from Thailand. The Unions contend that Samsung's activities in Mexico, coupled with the fact that Samsung established a CTV assembly manufacturing facility in Thailand after the CTV and CPT orders were in place, warrants a circumvention inquiry into Samsung's operations in Thailand as well.

(3) Is the Process of Assembly or Completion Minor or Insignificant?

When considering whether the process of assembly or completion is minor or insignificant, section 781(b)(2) of the Tariff Act further instructs the Department to take into account: (1) The level of investment and research and development in the foreign country; (2) the nature of the production process in the foreign country; (3) the extent of production facilities in the foreign country; and, (4) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The Unions, relying on the characteristics of the CTV industry, the legal framework under which respondents' affiliated companies have been established in Mexico, and the amount and type of CTV parts shipped to Mexico and Thailand, conclude that the process of assembly or completion in these countries is minor or insignificant.

The Unions explain that the production of CTVs may be segmented into three parts: (1) Product development, engineering and design; (2) component production; and (3) assembly and testing of finished televisions. According to the Unions, the first two segments of CTV production require large amounts of capital investment. In contrast, the assembly and testing of finished televisions is a relatively inexpensive labor-intensive operation that tends to be located where economic conditions, such as labor costs, are inexpensive. According to a cost analysis submitted by the Unions, the cost of labor and overhead for final assembly operations is less than seven percent of the overall cost of producing a CTV.

The Unions claim that data from ship manifests and overall patterns of trade reflected in U.S. import and Korean export statistics clearly indicates that respondents have continued to locate

the first two segments of CTV production (product development, engineering and design, and component production) in Korea while shifting only the relatively minor or insignificant operations of assembly and testing to Mexico and Thailand.

(4) Is the Value of the Merchandise Produced in the Foreign Country to Which the Antidumping Duty Order Applies a Significant Portion of the Total Value of the Merchandise Exported to the United States?

The Unions have submitted information taken from ship manifests that they claim indicates that the various CTV parts and components shipped from Korea to Mexico account for a significant portion of the total value of the CTVs exported to the United States. According to the Unions, the value of a CPT alone constitutes a significant portion of the value of a CTV. The Unions, citing Color Picture Tubes from Canada, Japan, Republic of Korea & Singapore; Negative Final Determination of Circumvention of Antidumping Duty Orders, 56 FR 9667, 9669 (March 7, 1991), claim that a CPT typically represents between 30 and 45 percent of the value of a finished CTV. The Unions assert that this ratio has not changed significantly since the CPT finding. The Unions claim that official data published by the Government of Korea show that a total of 3,635,630 CPTs were exported from Korea to Mexico during the period January 1994 through March 1995. Using manifest data for the same period, the Unions estimate that Samsung, Goldstar, and Daewoo shipped a total of 1,078,995 CPTs to affiliated parties in Mexico.

Furthermore, using ship manifests, the Unions have identified numerous shipments by respondents of CTV kits to their affiliates in Mexico. While the Unions acknowledge that the ship manifests do not provide enough information to determine what each CTV kit contains, the Unions claim that in some cases the unit weights of the kits suggest that the kit contains a significant portion of a finished CTV. In addition to CPTs and CTV kits, the Unions have used manifest data to identify other shipments of CTV parts along with other electronic parts or equipment they believe may be associated with CTV production. The Unions acknowledge that, due to the limited information provided on ship manifests, it was often necessary to estimate the total quantities submitted using the reported weight or model listed on the manifest. Furthermore, in cases where the manifest descriptions were vague, the Unions acknowledge that it was necessary to subjectively interpret the descriptions of the merchandise. As noted earlier, the Unions stated that they do not have access to manifest or bill of lading information on shipments by Samsung of Korean origin CTV parts and subassemblies to Thailand. Therefore, the Unions have relied on Korean export figures which show an increase in the amount of CPTs and PCBs exported from Korea to Thailand at the same time that U.S. imports of CTVs from Thailand began to increase. The Unions maintain that a general picture emerges after reviewing the numerous shipments by respondents to Mexico and the Korean export data to Thailand that the amount and type of CTV parts shipped to these countries for assembly and testing indicate that such parts constitute a significant portion of the total value of the finished CTV.

Additional Factors

In addition to the criteria discussed above, section 778(b)(3) of the Tariff Act instructs us to consider other factors before determining whether to include the merchandise in question in an antidumping duty order. These are: (1) The pattern of trade; (2) whether a relationship exists between the manufacturer or exporter and the third country assembler of the product; and (3) whether imports of the product into the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order.

First, the Unions assert that the pattern of trade clearly demonstrates that respondents have been circumventing the order by shifting the CTV assembly operations to Mexico and Thailand and shipping the assembled CTVs to the United States. The Unions, using U.S. import statistics, show that U.S. imports of CTVs from Korea began a sharp and consistent decline from a level of 1,811,613 in 1987 to 156,781 in 1994. Furthermore, the Unions note that overall U.S. imports of CTVs from Mexico, which were practically nonexistent in 1983, rose consistently to a level of 11,007,211 by 1994. During this period, the Unions contend that according to Korean export figures, CPT exports from Korea to the United States fell from a level of 1,367,024 in 1986 to 63,934 in 1994 while exports of CPTs from Korea to Mexico rose from 3,170 in 1986 to 2,893,579 in 1994. The Unions contend that there was a similar increase in exports from Korea to Mexico of printed circuit boards used in CTVs with 1988 exports of 1,507,747 rising to a level of 14,078,148 in 1994.

The Unions assert that such a pattern of trade is equally apparent with Thailand. According to Korean export figures submitted by the Unions, Korean exports of CPTs and PCBs to Thailand rose from a 1988 level of 186,904 and 81,806 respectively, to a 1994 level of 996,576 and 26,234,820. Further, the Unions note that U.S. import figures show a rise in overall U.S. CTV imports from Thailand from zero in 1988 to 1,705,430 in 1994. More specifically, the Unions, using ship manifest data, estimate that Samsung exported 243,062 CTVs from Thailand to the United States during the period January 1994 through March 1995.

Second, the Unions' allege that CTVs are being completed in Mexico by Daewoo Electronics De Mexico S.A., Goldstar Mexico S.A., and Samsung Mexicana, which are affiliated with the respondents and in Thailand by Thai Samsung Electronics Co., Ltd., which is affiliated with Samsung. Finally, the Unions assert that the pattern of trade evidence discussed above demonstrates that Korean exports of CTV parts and components to Mexico and Thailand increased after the May 27, 1983 initiation of the less than fair value investigation.

Based on our review of the foregoing allegations and supporting information submitted in the circumvention application, we find that the Unions' application contains sufficient evidence to warrant a circumvention inquiry. Therefore, we are initiating a circumvention inquiry concerning the antidumping duty order on CTVs from Korea (case number A–580–008), pursuant to section 781(b) of the Tariff Act. The Department will not suspend liquidation at this time. However, the Department will instruct Customs to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

Respondents have challenged the initiation of this anticircumvention inquiry on several grounds. As discussed below, these arguments do not provide a legal basis for rejecting the Unions' application for an inquiry.

Standing

A. Interested Party Status

The Department's regulations provide that any interested party may file an application to determine whether merchandise imported into the United States is circumventing an existing order. 19 C.F.R. § 353.29(b). The statute defines ''interested party'' to include unions that are ''representative of'' the domestic industry. Respondents argue that, because the statute defines ''industry'' as ''the producers as a whole'' of the like product, the ''union

cannot qualify as an interested party if it represents only an isolated segment of all domestic workers.'' To be representative, the views of the workers represented by the union ''must be 'typical' or must coincide with those of at least a 'major proportion' of the industry.'' Respondents note that the Unions do not represent the workers employed by six domestic producers that are not unionized. They then argue that the Unions' failure to explain which of the remaining domestic producers employ members of the Unions and in what capacity is a fatal flaw. We disagree.

The definition of ''interested party'' has remained unchanged since the 1979 amendments to the law. The legislative history of the 1979 amendments indicates that Congress intended to give unions standing if they ''[r]epresent workers in the relevant U.S. industry.'' S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979). Thus, the words ''representative of'' in the statute are intended to ensure that the union members include workers in the relevant industry, not to require that the union establish that it is acting on behalf of a majority of the domestic industry. See Final Negative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Malaysia, 50 F.R. 9852, 9854 (March 12, 1985) (rejecting the interpretation of ''representative'' put forth by respondents in this case). In the present case, the Unions have submitted evidence that they represent over 15,000 workers in the CTV industry. Approximately one-third of those workers are employed by a single company that is engaged in all aspects of CTV production. Thus, the evidence demonstrates that the Unions ''represent workers in the relevant domestic industry.'' The Unions, therefore, qualify as an interested party within the meaning of section 771(9)(D) of the Tariff Act.

Moreover, respondents' interpretation of the interested party definition would, in effect, add an industry support requirement to the interested party definition for unions. Thus, a union would be unable to participate as an interested party at any stage of a case (e.g., request an administrative review or a scope determination) unless it represented a majority of the workers in that industry. As discussed in the following section, imposing an industry support requirement at any stage of a case other than initiation of the investigation would be inconsistent with the statute.

B. Industry Support

Respondents argue that the legislative history of the Uruguay Round Agreements Act (URAA) indicates that Congress intended that an application for a circumvention inquiry must be filed ''on behalf of'' the domestic industry. This argument is based on a statement in the Senate Report that ''the Committee expects Commerce to initiate circumvention inquiries in a timely manner and generally consistent with the standards for initiating antidumping or countervailing duty investigations.'' S. Rep. 103–412, 103rd Cong., 2d Sess. 83 (1994). Respondents further argue that applying the industry support requirement to circumvention applications as well as petitions is compelled by the fact that both proceedings are designed to determine whether antidumping duties should be assessed on merchandise that would otherwise not be subject to such duties. In response, the Unions argue that the current statute expressly provides that industry support is an issue that is to be addressed only when initiating an investigation. A circumvention inquiry, like any scope inquiry, does not require a showing of industry support.

We agree with the Unions. The statutory requirement that petitions for investigations be filed ''on behalf of'' the domestic industry pre-dates the URAA. The URAA amendments merely set forth specific criteria for determining whether such industry support exists. The Department has never imposed a similar requirement on the filing of circumvention applications. Given that longstanding practice, it is unreasonable to interpret a single reference in the Senate Report to general consistency with initiation standards as evidence of Congressional intent to effect a major change in the requirements for circumvention applications.

Even more compelling is the fact that Congress specifically amended the law to preclude reconsideration of the issue of industry support at any stage in the proceeding beyond initiation of the investigation (section 732(c)(4)(E) of the Tariff Act of 1930, as amended). There is no exception for anticircumvention inquiries. Accordingly, while the Senate Report indicates an intent that the general evidentiary requirements for initiating petitions (e.g., allege the elements necessary for relief, accompanied by information reasonably available to support those allegations) be applied to circumvention applications, we do not interpret it as imposing an industry support requirement.

Further, we disagree with respondents' argument that the nature of a circumvention inquiry compels a contrary conclusion. Unlike an investigation, a circumvention inquiry is not designed to determine whether merchandise is being sold at less than fair value or whether such sales injure the domestic industry. A circumvention inquiry is designed to determine whether merchandise is properly within the scope of an existing order.[1] Neither the statute nor prior Department practice requires that an interested party requesting a scope determination demonstrate industry support.

Retroactivity

Respondents argue that, because the circumvention application is based primarily on data from 1994, initiation of an inquiry would constitute an impermissible retroactive application of the URAA amendments, which became effective on January 1, 1995. We disagree.

The statute is clear on this point. Section 291 of the URAA expressly provides that circumvention proceedings requested after January 1, 1995, are governed by the Act as amended. The Unions filed the CTVs circumvention application on August 11, 1995, eight months after the URAA amendments came into effect. Nothing in the URAA or the legislative history prohibits the Department from considering information from a period before the new provisions were enacted. Further, determinations based on the evaluation of information from prior periods is part of the normal statutory scheme. Therefore, when Congress based the coverage of the amendments on the date a petition or application was filed, it must have envisioned proceedings under the new law that would be initiated based on, and that would examine, pre-1995 information. Under respondents' theory it would have been effectively impossible to initiate any cases under the new law until well into 1995. Such a result would be inconsistent with the express intent that the law apply to proceedings requested after January 1, 1995.

[1] The Mexican Government has argued that the imposition of all antidumping duties, including those imposed under circumvention provisions, must be consistent with Article VI of the General Agreement on Tariffs and Trade. The antidumping order on Korean CTVs was imposed consistent with Article VI. The circumvention finding involves a determination whether the merchandise at issue is covered by that order. If we made an affirmative circumvention finding, antidumping duties imposed on any merchandise found to be within the scope of the order would be consistent with Article VI.

North American Free Trade Agreement (NAFTA)

Respondents argue that NAFTA's detailed provisions concerning trade with Mexico in CTVs were carefully negotiated and enacted to address the circumvention concerns of the U.S. industry. Consequently, they argue, NAFTA and its implementing legislation is the exclusive scheme by which to protect the domestic CTV industry from circumvention, through Mexico, of the antidumping order on CTVs from Korea. They assert that a circumvention inquiry would unilaterally change these painstakingly crafted provisions.

To the contrary, section 1901:3 of the NAFTA explicitly provides that nothing in other chapters should be construed as creating obligations that affect any party's unfair trade statutes. Moreover, nothing in the NAFTA implementing statute states that the anticircumvention provisions have been superseded by the NAFTA rules of origin on CTVs. A review of the history and purpose of those rules demonstrates that they were not intended to supplant the circumvention provisions of the Act.

In 1990, the U.S. industry requested an inquiry regarding alleged circumvention of the U.S. antidumping orders on CPTs through Mexico. Based on the statutory criteria then in existence, the Department reached a negative determination. Color Picture Tubes from Canada, Japan, Republic of Korea and Singapore; Negative Determinations of Circumvention of Antidumping Duty Orders, 55 FR 52036, (December 19, 1990) (preliminary); 56 FR 9667, (March 7, 1991) (final). Although the NAFTA rules of origin are rules of preference, not anticircumvention provisions, the rules (and the related monitoring provisions) were designed with the circumvention problem in mind. When passing the NAFTA implementing legislation, Congress, mindful of the deficiencies in the anticircumvention provisions of the law at the time, expressed its ''expectation that [the monitoring provisions] will give the Administration the tools necessary to ensure that any circumvention that is occurring within NAFTA countries will cease.'' S. Rep. No. 103–189, 103rd Cong., 1st Sess. 25 (1993). Thus, it was intended that the NAFTA rules of preference and monitoring provisions would succeed where the existing anticircumvention law had proven inadequate.

After the implementation of NAFTA, the anticircumvention provisions of the Tariff Act were amended by the URAA. Those amendments improved the provisions on assembly in third countries by focusing on the nature of the process in the third country and the portion of total value represented by parts and components from the country subject to the antidumping order. Similarly, the NAFTA rules of preference were tightened to promote significant manufacturing and value added in Mexico. Thus, although the NAFTA rules of preference are distinct from the anticircumvention provisions, they may operate in specific cases such that compliance with the rules of origin for NAFTA preferences may make it impossible as a factual matter to meet the circumvention criteria of section 781 of the Act, as amended. It is, therefore, appropriate to explore as a threshold matter whether imports of CTVs that satisfy the NAFTA rules of origin could constitute circumvention. We will be establishing at the outset of this inquiry a schedule for questionnaires and comments on this issue.

This notice is published in accordance with Section 781(b) of the Act (19 U.S.C. 1677j(b)) and 19 CFR 353.29.

Dated: December 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–625 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–707]

Granular Polytetrafluoroethylene Resin From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On October 12, 1995, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan. The review period was August 1, 1994, through July 31, 1995. We are now terminating that review.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1995, Du Pont de Nemours & Company (Du Pont), a domestic producer of PTFE resin, requested that the Department conduct an administrative review of the antidumping duty order on granular PTFE resin from Japan with respect to one manufacturer/exporter, Daikin Industries, Ltd. and Daikin America, Inc. (collectively Daikin). The review period is August 1, 1994, through July 31, 1995.

On October 12, 1995, the Department published in the Federal Register (60 FR 53164) a notice of initiation of an administrative review of the order with respect to Daikin and the period August 1, 1994, through July 31, 1995. On October 18, 1995, Du Pont withdrew its request for a review and requested that the review be terminated.

The Department's regulations at 19 CFR 353.22(a)(5) (1994) state that ''the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request no later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.'' The withdrawal of the request for review was made within 90 days of the notice of initiation. Because there were no requests for review from other interested parties, we are terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: December 6, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–458 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–818]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Donna Berg, or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5288, (202) 482–0114, or (202) 482–0186, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that certain pasta (pasta) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation, the following events have occurred *(Notice of Initiation of Antidumping Duty Investigations: Certain Pasta from Italy and Turkey,* 60 FR 30268, 30269 (June 8, 1995) (*Initiation Notice*):

On June 26, 1995, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–734).

On July 10, 1995, the Department of Commerce (the Department) determined the resources available for this investigation limited our ability to analyze any more than the responses of the eight largest exporters of pasta to the United States. *See* the *Respondent Selection* section of this notice. We chose the following eight companies as mandatory respondents in this investigation: Arrighi S.p.A. Industrie Alimentari (Arrighi); F.lli De Cecco di Filippo Fara San Martino S.p.A. (De Cecco); Pastificio Del Verde S.r.l. (Delverde); De Matteis Agroalimentare S.p.A. (De Matteis); La Molisana Industrie Alimentari S.p.A. (La Molisana); Liguori Pastificio Dal 1820 S.p.A. (Liguori); Pastificio Fratelli Pagani S.p.A. (Pagani); and Saral Industrie Alimentari Della Sardegna S.r.l. (Saral) (collectively respondents). We issued antidumping duty questionnaires, in accordance with 19 CFR 353.42(b), concerning Sections A, B, C, and D of the questionnaire to the eight mandatory respondents. Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production of the foreign like product and constructed value of the merchandise under investigation.

On July 25 and 31, 1995, Delverde submitted comments concerning its relationship with an affiliate, Tamma Industrie Alimentari (TIA). On August 8, 1995, the Department requested clarification concerning this relationship. Responses to the Department's questions were received on August 14 and 15, 1995. On August 22, 1995, the Department determined TIA to be affiliated with Delverde under section 771(33) of the Act and informed Delverde that it must include TIA's sales in its response to Sections B and C of the questionnaire.

The Department also requested clarification concerning the relationship between Arrighi and another Italian pasta manufacturer, Italpasta. We received the response to our inquiries on September 6, 1995. Based on the response, we determined Italpasta to be affiliated with Arrighi and, on September 8, 1995, we informed Arrighi that it must include Italpasta's sales in its response to sections B and C of the questionnaire. Arrighi requested the Department to reconsider this decision. On September 26, 1995, however, we reiterated the determination that Arrighi and Italpasta are affiliated parties within the meaning of section 771(33) of the Act.

On August 14, 1995, Saral requested that it be removed from the list of mandatory respondents citing the following: (1) it had ceased production in March 1995, (2) by July 1995, the company's employees had left Saral, (3) Saral's plant and property are for sale, and (4) Saral will no longer export any products to the United States. On August 18, 1995, the Department informed Saral that if it could document the alleged extenuating circumstances, it would not be required to respond to the Department's questionnaire. Saral submitted the documentation on September 15, 1995. On September 19, 1995, the Department notified Saral that it had rescinded its determination that Saral is a mandatory respondent on the basis of the information the company submitted but that the information was subject to verification.

On August 25, 1995, in accordance with section 733(c)(1)(B) of the Act, the Department determined this investigation to be extraordinarily complicated due to the large number of companies selected for investigation, the complexity of the transactions, and novel issues presented as a result of this investigation being one of the first cases conducted since the effective date of the Uruguay Round Agreements Act. Consequently, the Department postponed the preliminary determination until no later than December 8, 1995 (60 FR 45154 August 30, 1995). As a result of the federal government six-day shutdown, this date was further extended to December 14, 1995.

On September 13, 1995, La Molisana requested that it be excused from reporting its home market sales of the ''La Corte'' label. La Molisana stated that there were no U.S. sales of ''La Corte'' during the period of investigation (POI) and that the home market sales during the POI did not amount to a significant volume. The Department granted this request on September 26, 1995.

On October 20, 1995, the petitioners alleged ''targeted dumping'' within the meaning of section 777A(d)(1)(B) of the Act and requested that the Department compare the transaction-specific export prices in the U.S. market to the weighted-average normal values for each respondent. *See* the Targeted Dumping section of this notice.

The respondents submitted questionnaire responses to Sections A, B, C and D of the questionnaire in August, September, and November, 1995. The Department issued supplemental questionnaires in September and October, 1995. Responses to these supplemental questionnaires were received in September, October, and November, 1995.

On October 10, 1995, Borden Inc., Hershey Foods Corp., and Gooch Foods, Inc. (the petitioners) alleged that Pagani sold the subject merchandise in Italy during the POI at prices below the cost of production (COP). The petitioners filed similar allegations against Liguori, Arrighi, De Matteis, De Cecco, Delverde,

La Molisana, and Arrighi between October 11 and October 19, 1995. Our analyses of these allegations indicated that there were reasonable grounds to believe or suspect that each of the respondents sold pasta in Italy at prices below the COP. Accordingly, we initiated COP investigations against these respondents pursuant to section 773(b) of the Act (see Memoranda from Gary Taverman to Barbara Stafford, dated October 19, 1995, October 21, 1995, and October 25, 1995). The Department received responses to Section D of the questionnaire, the cost-of-production section, from each of these companies in November, 1995.

Facts Available

De Cecco submitted its response to Section D of the questionnaire on November 27, 1995. It had submitted supplemental questionnaire responses to Section A on September 22, 1995, and to Sections B and C on November 6, 1995. An analysis of these responses indicated that De Cecco had not provided a complete reporting of all of the affiliated persons defined in section 771(33) of the Act and requested in question 2 of Section A of the Department's questionnaire. Specifically, while reviewing De Cecco's various responses, it became apparent that De Cecco failed to report the sales and production information of an affiliated company and the relationships among related investors in both De Cecco and the affiliated company. *See also,* Memorandum from Gary Taverman to Barbara Stafford dated December 14, 1995. The omissions and resulting inaccuracies in the De Cecco responses were material to the Department's ability to calculate a dumping margin and we met with counsel for De Cecco on December 4, 1995, to inform them of this fact. At that time, we provided a list of basic questions regarding affiliated persons to counsel and informed counsel that responses to these questions were necessary to clarify inconsistent, inaccurate, or misleading information in De Cecco's earlier submissions and to establish a frame of reference for additional questions that remain unanswered. De Cecco supplied responses to the questions on the list on December 6, 1995. The Department is in the process of preparing supplemental questions for issues that have yet to be resolved in the company's responses. Inasmuch as the company's responses to date indicate that both the U.S. and home market sales data bases are incomplete and that certain sales data and production costs have not been reported, we cannot conduct an accurate cost of production analysis or a less-than-fair-value analysis using the reported prices.

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a determination under the antidumping statute, or provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because De Cecco repeatedly failed to submit the information that the Department had specifically requested and failed to clarify the inconsistencies in the material that it did submit, we must use facts otherwise available with regard to De Cecco.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA, at 870. Again, De Cecco's failure to provide information in its possession that the Department requested on repeated occasions and its failure to clarify inconsistencies in information it submitted on the record demonstrate that De Cecco has failed, to date, to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to De Cecco, an adverse inference is warranted. As facts otherwise available, we are assigning to De Cecco the simple average of the range of the margins stated in the notice of initiation, 46.67 percent.

Section 776(c) provides that when the Department relies on secondary information in using the facts otherwise available it must, to the extent practicable, corroborate that information. When analyzing the petition, the Department reviewed all of the data the petitioners had submitted and the assumptions that petitioners made in calculating estimated dumping margins. As a result of that analysis, the Department revised the home market prices that petitioners relied upon in calculating the estimated dumping margins. On the basis of those adjustments, the Department recalculated the estimated dumping margins for certain pasta from Italy and found them to range from 21.85 percent to 71.49 percent. *See* Initiation Notice. In sum, the Department corroborated all of the secondary information in the petition from which the margins were calculated during our pre-initiation analysis of the petition.

We informed counsel for De Cecco that if the company's responses to our supplemental questions are complete, we will attempt to conduct verification of the company's information. If we verify that De Cecco's reported information is accurate and complete, we will use such information in the final determination.

Mandatory Respondent Selection

Section 777A(c) of the Act states that the Department shall calculate an individual dumping margin for each known exporter or producer of the subject merchandise, except where this approach is not practicable due to the large number of exporters or producers. Under this exception, the Department may limit its examination to: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters or producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Section 353.44(b)(1) of the Department's regulations states that the Department will normally examine not less than 60 percent of the volume or value of sales, while section 353.59(b)(1) provides for sampling when a significant volume of sales is involved.

The petitions filed against pasta from Italy and Turkey listed 73 Italian and 15 Turkish companies as possible producers or exporters of pasta to the United States. Other information available to the Department indicated an equally large number of producers or exporters. Since, at the time of respondent selection, there was insufficient information on the record to employ statistically valid sampling techniques, the Department focused its selection on the producers and exporters accounting for the largest volume of exports to the United States (*see Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan* (58 FR 34585, (August 23, 1990)) and *Fresh Cut Roses from Colombia and Ecuador.* (60 FR 13958, (March 15, 1995)). Based on the administrative resources available to the Department and the anticipated inclusion of many complex issues related to new provisions of the Act, it was determined that the maximum total number of companies that could be handled in the parallel pasta investigations was ten. In a subsequent analysis of the volume of exports of individual companies from Italy and Turkey, it was determined that investigating ten companies would allow the Department to investigate 45 percent of the volume of exports from

each country. In Italy, 45 percent was attained with the eight largest companies, while in Turkey 45 percent was attained with the two largest companies. A complete analysis of the respondent selection process is contained in a July 7, 1995, decision memorandum from Gary Taverman to Barbara Stafford.

Voluntary Respondents

Section 782(a) of the Act states that individual rates shall be calculated for firms which voluntarily provide information, except where the number for all such respondents is so large that the calculation of individual dumping margins for all such respondents would be unduly burdensome and would prevent the timely completion of the investigation. Based on the same reasoning that led the Department to limit the number of respondents in the two antidumping duty investigations to ten companies (*i.e.* the large number of companies and administrative resource constraints), the Department determined that no voluntary respondents could be accepted unless one of the mandatory respondents did not participate. (*See* the July 7, 1995, decision memorandum from Gary Taverman to Barbara Stafford.) Potential voluntary respondents were provided with specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. Ultimately, no voluntary respondent attempted to fulfill the Department's criteria for consideration.

Postponement of Final Determination

On December 11, 1995, Arrighi, De Cecco, De Matteis, Delverde, La Molisana, and Liguori requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of the affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b), inasmuch as our preliminary determination is affirmative, the respondents account for a significant proportion of exports of the subject merchandise, and we are not aware of the existence of any compelling reasons for denying the request, we are granting respondents' request and postponing the final determination.

Scope of Investigation

The merchandise under investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

(1) On July 19, 1995, and on August 24, 1995, the Association of Food Industries and the petitioners, respectively, requested that we expand the scope to cover all imports of non-egg dry pasta for the retail and food service markets. We have determined that the scope should not be expanded. *See, Preliminary Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 60 FR 53739 (October 17, 1995). (For further discussion of this decision, *see* Memorandum to Susan G. Esserman, Assistant Secretary for Import Administration, dated October 10, 1995.)

(2) On October 2, 1995, a U.S. importer of Italian pasta requested that the Department exclude from the scope of this investigation and the companion countervailing duty investigation ''organic pasta'' in compliance with European Economic Community Regulation No. 2092/91. This regulation sets forth a regime of standards for the cultivation, processing, storage, and transportation of organic foodstuffs with inspections of farms and processing plants by EEC-approved national certification authorities. For example, organic wheat farmers abstain from using chemical fertilizers, pesticides, and fungus control and, instead, rely upon the use of compost, manure, and crop rotation for fertilizer, predator insects for pest control, and air ventilation and movement systems to control fungus.

On November 9, 1995, the petitioners indicated that they were willing to modify the scope of the petition and the investigation to exclude certified organic pasta of Italian origin if U.S. imports of such pasta were accompanied by certificates issued pursuant to EEC Regulation No. 2092/91.

On November 21, 1995, we requested additional data on the EEC regulation and certification process from the Section of Agriculture of the Delegation of the European Commission of the European Union. On December 8, 1995, the European Commission submitted responses to our inquiries. Included in the information submitted was the statement that EEC Regulation No. 2092/91 ''. . . does not provide for certification of products intended for export to third Countries.'' Accordingly, we will not be able to modify the scope of the investigation to exclude organic pasta on the basis of the certification procedure called for under EEC Regulation No. 2092/91. Nevertheless, if similar certification procedures are established for exports to the United States, the Department will consider an exclusion for organic pasta at that time.

Period of Investigation

The period of investigation is May 1, 1994, through April 30, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign-like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign-like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire. In making the product comparisons, we relied on the shape classifications proposed by the respondents.

Targeted Dumping

On October 20, 1995, the petitioners requested that, for all respondents, the Department compare the transaction specific export prices in the United States market to weighted-average normal values, in accordance with the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. The petitioners' allegation rested on an analysis of average retail prices of selected brands of pasta, rather than on the export or constructed export prices of the respondents which were already on the record in the investigation and thus available to the petitioners. This

request was denied by the Department on November 8, 1995, on the grounds that the allegation did not meet the requirements of section 777(A)(d)(1)(B) because it was not: (1) Based on exporter-specific prices; (2) based on examination of ''comparable'' merchandise. See Memorandum from the Pasta Team to Barbara S. Stafford dated November 8, 1995.

On November 21 and 22, 1995, the petitioners requested that the Department apply the ''targeted dumping'' provision when calculating dumping margins for two of the Italian respondents, De Cecco and Delverde. The petitioners' allegation claimed that there is substantial evidence that prices for pasta sold by De Cecco and Delverde in the United States vary significantly on the basis of purchaser, geographic region and time and that using a weighted-average price would have the effect of concealing or minimizing dumping. This request was denied by the Department on December 8, 1995, on the ground that the petitioners' analysis failed to meet the basic requirements of section 777A(d)(1)(B) (i) and (ii).

The petitioners' allegation was based on conclusions drawn from simple averaging or from minimum and maximum price differentials and was not supported by any more specific analysis addressing the statutory elements. For example, the petitioners did not demonstrate satisfactorily a pattern of export prices differing significantly among either purchasers, regions or periods of time; moreover, they did not provide evidence or argument as to why different patterns of export prices could not be taken into account using the section 777A(d)(1)(A) preferred fair value comparison methodology. *See,* Memorandum from the Pasta Team to Barbara S. Stafford dated December 8, 1995.

Level of Trade

As set forth in section 773(a)(7)(A) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for differences in levels of trade if two conditions are met. First, there must be differences between the selling functions performed by the seller at the different levels of trade. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at different levels of trade in the market in which normal value is determined. When constructed export price is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a constructed export price offset when: (1) Normal value is at a different level of trade, and (2) the data available do not provide an appropriate basis for a level of trade adjustment.

In order to identify levels of trade, the Department must review information concerning selling functions of the exporter. In addition, a respondent seeking to establish a level of trade adjustment must demonstrate the appropriateness of such an adjustment. Therefore, in addition to the questions related to the level of trade in our July 10, 1995, questionnaire, on October 23, 1995, we sent each respondent supplemental questions related to level of trade comparisons and adjustments. We asked each respondent to establish any claimed levels of trade based on selling functions performed and services offered to each customer or customer class, and to document and explain any claims for a level of trade adjustment.

Upon review of each respondent's submissions on level of trade, and other related information on the record, we identified one or both of the following difficulties: 1) not all of the selling functions performed were identified; 2) although certain selling functions were assigned to specific groups of customers, not all customers in some identified groups were provided the service.

In light of these concerns, we reviewed each response to identify all types of selling functions, both claimed and unclaimed, that had been provided. We subsequently consolidated the selling functions into four broad categories related to the sale of pasta: (1) Freight and delivery services; (2) advertising; (3) maintaining finished goods inventories to fill customer orders; and (4) other service programs (primarily handling rebate and warranty claims). We then analyzed each respondent's submissions to determine which selling function categories applied to each pasta sale made in the U.S. and Italian market. We did this based on both the selling expenses reported for that transaction and the respondent's narrative descriptions. Finally, we created a computer program that assessed, on a transaction specific basis, whether or not services corresponding to the four selling function categories were provided.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale (as indicated by the level of trade codes established in the computer program). Where comparisons at the same level of trade were not possible, we attempted a comparison at the next most comparable level of trade. Any remaining unmatched U.S. sales were compared to sales in the comparison market without regard to level of trade.

Two Italian respondents, Liguori and La Molisana claimed a level of trade adjustment for comparisons between different levels of trade. However, these level of trade adjustments were not allowed because none of the claimed adjustments were based on price differences between the two levels of trade. One respondent, Del Verde, claimed a constructed export price offset, but the offset was not considered because U.S. sales were matched to normal values at the same levels of trade.

The level of trade methodology employed by the Department in this preliminary determination is based on the facts particular to this investigation. As stated above, there is a new emphasis on function of the seller in determining level of trade, as well as new conditions for a level of trade comparison or adjustment. The Department intends, where appropriate, to request additional information prior to verification for its continuing analysis of this issue. The Department will continue to examine its policy for making level of trade comparisons and adjustments.

Fair Value Comparisons

To determine whether sales of pasta by the Italian respondents to the United States were made at less than fair value, we compared the export price (EP) and/or constructed export price (CEP) to the Normal Value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs and CEPs for comparisons to weighted-average NVs.

For certain U.S. and Italian market sales, Arrighi, Delverde, La Molisana, Liguori, and Pagani reported the re-sale of subject merchandise purchased in Italy from unaffiliated producers. Section 772(a) of the Act defines the export price to the United States in a reseller situation as ''the price at which the subject merchandise is first sold (or

agreed to be sold) by the producer to an unaffiliated purchaser for exportation to the United States.'' Where unaffiliated producers of the merchandise under investigation knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the export price would be the price between the producer and the respondents. Delverde, Liguori, La Molisana, Pagani, and Arrighi have each stated that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because the U.S. market is the only market where enriched pasta is sold. For these transactions, therefore, the price between the respondents and their U.S. customers cannot be the basis for the export price.

In calculating EP for Arrighi, however, we were unable to determine which particular U.S. sales were of merchandise produced by firms other than Arrighi. Therefore, we weighted the dumping margin for Arrighi for each product category it identified by 1) calculating a ratio of the volume of Arrighi-produced product to the combined total volumes of Arrighi-produced and purchased product in the same period, and 2) applying the ratio to margin calculation for that corresponding product sold to the United States during the POI, allowing us to calculate a margin based on an estimated quantity of Arrighi-produced product.

Because section 773(a)(1)(B)(i) of the Act incorporates by reference the definition of foreign like product in section 771(16) of the Act, it prohibits our using sales of merchandise produced by persons other than the respondents in our calculation of normal value. Accordingly, we have excluded from our analysis all of the sales from each of the companies of subject merchandise in the U.S. and Italian markets that were not produced by the respondent companies.

Export Price and Constructed Export Price

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, for each of the respondents, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. In addition, for Delverde, we calculated CEP, in accordance with subsections 772(b) and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We made company-specific adjustments as follows:

Arrighi

We calculated EP based on packed, ex-works, FOB Italian port, and C&F prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for the following charges: foreign inland freight and brokerage, marine insurance, handling, and early payment discounts. We recalculated credit expenses for those transactions with no reported payment dates. For U.S. sales denominated in U.S. dollars, we adjusted interest expenses by applying the average U.S. prime interest rate during the POI.

Delverde

We calculated EP based on packed, CIF, FOB Naples, C&F, or FAS Naples prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for discounts, rebates, freight and warehousing expenses, foreign brokerage and handling, and ocean freight and marine insurance.

We recalculated Delverde's gross unit prices for those sales that did not reflect ocean freight revenues and expenses. We also recalculated reported credit expenses and inventory carrying costs based on the weighted average of its short-term borrowings during the POI.

We calculated CEP sales based on packed, FOB U.S. warehouse delivery to unaffiliated customers or on duty-paid, ex-dock prices to unaffiliated customers. Where appropriate, we made deductions for discounts, rebates, advertising, commissions, and credit. We also made deductions for foreign brokerage and handling, freight and warehousing expenses, ocean freight and marine insurance, U.S. brokerage and handling, and U.S. duty and harbor fees. We deducted those indirect selling expenses, including inventory carrying costs, that related to commercial activity in the United States. Finally, we made an adjustment for CEP profit in accordance with section 772 of the Act.

De Matteis

We calculated EP based on packed, ex-factory prices to unaffiliated customers. We made no deductions from the starting price because no discounts, rebates, or movement expenses were reported. In those instances where De Matteis had not reported payment dates, we recalculated reported credit expenses.

La Molisana

We based EP on packed, FOB Port of Naples prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage, and handling charges. We also recalculated credit expenses based upon information La Molisana submitted on November 30, 1995.

Liguori

We based EP on packed, ex-factory prices to unaffiliated customers in the United States. Where appropriate, we made deductions for discounts, foreign brokerage and handling. For those sales denominated in Italian lira, we recalculated credit expenses using the short-term borrowing rate reported for the Italian market.

Pagani

Pagani had not correctly reported its starting prices. We calculated EP on the basis of recalculated packed, prices to unaffiliated customers. Where appropriate, we made deductions from the starting price for quantity discounts, other discounts, rebates, and movement expenses. In those instances where Pagani did not report either payment dates or payment dates and shipment dates, we recalculated Pagani's reported credit expenses. Where Pagani did not report only shipment dates, we recalculated movement expenses.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since all respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent. Therefore, we have based NV on home market sales.

Cost of Production Analysis

As noted in the Case History section above, based on the petitioners' allegations, the Department found reasonable grounds to believe or suspect that each respondent made sales in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether the respondents made home market sales during the POI at prices below their respective cost of

production (COP) within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the respondents' COP amounts except in the following specific instances wherein the reported costs were improperly valued:

Arrighi. Arrighi and Italpasta excluded bank charges and commissions from the calculation of financial expenses. As these costs relate generally to the financing operation of the companies, we included them in the revised calculation of financial expenses.

Delverde. (1) Delverde and TIA reported product-specific production quantities and costs of manufacture (COM) separately for each company. We used the reported production quantities to calculate a combined weighted-average COM for Delverde and TIA on a product-specific basis.

(2) We combined Delverde's and TIA's submitted G&A expenses and cost of sales figures to derive a single G&A factor. Delverde included a negative amount for its parent company's allocated G&A. We excluded this amount in the revised G&A rate.

(3) We combined Sangralimenti (Delverde's consolidated parent) and TIA's submitted net financing costs and cost of sales figures to derive a single net interest factor.

De Matteis. (1) In calculating its cost of producing semolina, De Matteis offset wheat costs with the sales value of other products. We revised De Matteis' material costs to exclude this offset because it is inappropriate to reduce the cost of producing pasta with revenues earned on unrelated products.

(2) We revised De Matteis' material costs to reflect the yield loss for both the self-produced and purchased semolina used in producing pasta.

(3) De Matteis' financial statement indicated that the company incurred additional costs relating to employee social security. These costs were reported as extraordinary expenses on the company's financial statements. De Matteis did not report these costs in its COP and CV. We believe, however, that these amounts are properly included as part of labor costs relating to pasta production. We therefore revised De Matteis' submitted COP and CV figures to include the social security costs.

La Molisana. La Molisana included bond interest income in its calculation of short-term interest income used as an offset to interest expense. We excluded the bond interest income because bonds generally are long-term in nature and, thus, are not an appropriate offset in calculating the interest expense. We adjusted La Molisana's reported indirect selling expenses by reclassifying a portion of reported direct advertising expense as indirect expenses.

Liguori. Liguori did not include discount and finance charges in its calculation of financing expense. Given that Liguori's discount and finance charges are listed as an interest expense on its financial statement, we recalculated the company's financing expense inclusive of these charges.

Pagani. We made no changes to Pagani's submitted costs.

B. Test of Home Market Prices

We used the respondents' adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time. On a product specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(c) where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded only the below-cost sales where such sales were found to be made within an extended period of time (in accordance with section 773(b)(2)(B) of the Act) and at prices which would not permit recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). For each respondent, where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a) of the Act.

We found that, for certain types of pasta, more than 20 percent of the following respondents' home market sales were sold at below COP prices within an extended period of time in substantial quantities: Arrighi, De Matteis, and La Molisana, and Liguori. Further we did not find that these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those types of pasta for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales databases. In accordance with sections 773(e)(2)(A) we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Where appropriate, we calculated each respondent's CV based on the methodology described in the calculation of COP above. For selling expenses, we used the weighted-average home market selling expenses.

For each of the respondents, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV. In addition, in accordance with section 773(a)(6)(B), we deducted home market packing costs and added U.S. packing costs for all respondents.

We adjusted for commissions as follows. Where commissions were paid on some, but not all, home market sales used to calculate NV, and U.S. commissions were greater than home market commissions, we calculated the weighted-average of home market indirect selling expenses attributable to those sales on which no commissions were paid. If U.S. commissions were greater than the sum of the home market commissions and indirect selling expenses, we deducted the weighted-average home market indirect selling expenses from NV. Otherwise, we adjusted NV for the difference between U.S. and home market commissions. Where no commissions were paid on a

home market sale used to calculate NV, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. Where commissions were paid on all home market sales used to calculate NV, we adjusted NV by the lesser of either (1) the amount of the commission paid on the home market sale, or (2) the weighted average of indirect selling expenses paid on U.S. sales.

La Molisana and Liguori reported that their sales to their respective affiliated resellers were made at arm's length. Sales not made at arm's length were excluded from our LTFV analysis. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct and indirect selling expenses, and packing. We utilized the 99.5 percent benchmark ratio used in the 1993 carbon steel investigations (*see* below). Where a related customer price ratio was composed of comparisons between sales of identical products to unrelated customers at both the same and different levels of trade, only those sales of identical products at the same level of trade were used to construct the ratio. Where a related customer ratio was composed of comparisons between sales of identical products to unrelated customers but those sales did not take place at the same level of trade, we continued to use all the sales in our comparisons regardless of level of trade to construct the ratio. Where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (58 FR 37062, 37077 (July 9, 1993)).

Price-to-Price Comparisons. We made company-specific adjustments for price-to-price comparisons as follows:

Arrighi. We calculated NV based on ex-works or delivered prices to unaffiliated customers. We made deductions from the starting price for discounts, rebates, and inland freight. In addition, we adjusted for differences in circumstances of sale for imputed credit expenses, advertising, warranties, and commissions.

We recalculated Arrighi's credit expenses for those transactions missing payment dates.

Delverde. We allowed Delverde to exclude sales of gift packets in the home market; its home market sales from its on-site factory store; and the home market sales of pasta by, and sales of pasta purchased from, an affiliated producer. We calculated NV based on ex-factory, ex-warehouse, CIF, or delivered prices to unaffiliated customers. Deductions were made for discounts and rebates, inland freight, warehousing and insurance expenses. In addition, we made circumstance of sale adjustments or deductions for credit, advertising expenses, and commissions, where appropriate. We reclassified reported slotting fees and certain commission payments as indirect selling expenses because Delverde was unable to link these payments to specific POI sales.

De Matteis. We calculated NV based on ex-factory or delivered prices to unaffiliated customers. We made deductions from the starting price for discounts and inland freight. We also made adjustments for differences in sale for imputed credit and commissions. In those instances where De Matteis did not report a payment date, we recalculated reported credit expenses.

La Molisana. We based NV on ex-factory or delivered prices to unaffiliated customers, or prices to affiliated customers that were determined to be at arm's length. We made deductions for discounts and rebates, inland freight, and pre-sale warehousing expenses. We made circumstance of sale adjustments for differences in credit and advertising expenses between the United States and the home market.

In reporting a discount, La Molisana reported both the value recorded in its internal accounting system on specific invoices and the average discount on a customer-specific basis. We relied upon the average amount reported on a per customer basis. We also adjusted La Molisana's reported direct advertising expense by removing introduction incentives and trade promotion expenses and adding these expenses to the indirect selling expenses reported as a component of COP (*see* ''Calculation of COP'' section below). Finally, we excluded a small number of reported sales where product characteristics were not reported and/or the transactions were later found not to have been sales.

Liguori. We based NV on delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length. Deductions were made for discounts and rebates, inland freight and unloading expenses. We made circumstance of sale adjustments for differences in credit, warranty, commission, and advertising expenses. We recalculated Liguori's reported credit expenses in instances where Liguori had not reported a payment date because the merchandise had not yet been paid for at the time of the filing of its responses. We also reclassified reported slotting fees as indirect selling expenses.

Pagani. Pagani had not correctly reported its starting prices. We recalculated NV on the basis of ex-factory prices to unaffiliated customers. Where appropriate, we deducted discounts, rebates, and movement expenses from the starting price. We also made adjustments for differences in sale for imputed credit expenses, advertising, and commissions. In those instances where Pagani did not report payment dates or payment and shipment dates, we recalculated reported credit expenses. Where Pagani did not report shipment dates, we recalculated movement expenses.

Price to CV Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

Currency Conversion

For the purpose of the preliminary determination, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' For this preliminary determination, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. No adjustment period is warranted in this case, because

the Italian lira generally remained constant or depreciated against the U.S. dollar during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain pasta from Italy, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. Normally, we would instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. However, the product under investigation is also subject to concurrent countervailing duty investigation. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(c)(1)(C) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies, there is no reason to require a cash deposit or bond for that amount.

The Department has determined, in its *Preliminary Affirmative Countervailing Duty Determination: Certain Pasta from Italy* (60 FR 53747 (October 17, 1995)), that the product under investigation benefitted from export subsidies. To obtain the most accurate estimate of antidumping duties, and to fulfill our international obligations arising under the GATT, we are subtracting, for deposit purposes, the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation. (For Arrighi 0.62, Delverde 0.77, and La Molisana 0.08 percent.) We are also subtracting from the ''All Others'' rate the cash deposit rate attributable to the export subsidies included in the countervailing duty investigation for the All Others rate, 0.20 percent. In keeping with Article of 17.4 of the WTO Agreement on Subsidies and Countervailing Measures, the Department will terminate the suspension of liquidation in the companion countervailing duty investigation of *Certain Pasta From Italy*, effective February 14, 1995, which is 120 days after the date of publication of the preliminary determination. Accordingly, on February 14, 1996, the antidumping deposit rate will revert to the full amount calculated in this preliminary determination. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/Manufacturer	Weighted-average margin percentage	Bonding percentage
Arrighi	0.06	0.00
De Cecco *	46.67	46.67
Delverde	0.06	0.00
De Matteis	22.15	22.15
La Molisana	14.83	14.03
Liguori	12.85	12.85
Pagani	0.14	0.00
All Others	15.85	15.56

* Facts Available Rate.

Pursuant to section 775(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins and margins determined entirely under section 776 of the Act, from the calculation of the All Others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than April 1, 1996, and rebuttal briefs, no later than April 4, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 8, 1996, the time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–457 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–489–805]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288 or (202) 482–0186, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA).

Preliminary Determination

We determine that there is a reasonable basis to believe or suspect that certain pasta (pasta) from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on June 1, 1995 (60 FR 30268, June 8, 1995), the following events have occurred:

On June 26, 1995, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731–TA–734).

On July 10, 1995, the Department of Commerce (the Department) determined that, due to limited resources, we would only be able to analyze the responses of the two largest exporters of pasta to the United States. The following two companies were named as mandatory respondents in this investigation: Filiz Gida Sanayii ve Ticaret A.S. (Filiz) and Maktas Makarnacilik ve Ticaret A.S. (Maktas). For a further discussion, see the ''Mandatory and Voluntary Respondent Selection'' section of this notice. In accordance with 19 CFR 353.42(b), we issued antidumping duty questionnaires concerning Sections A, B, C, and D of the questionnaire to the two mandatory respondents on July 12, 1995. Section A of the questionnaire requests general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings. Section D of the questionnaire requests information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

The respondents submitted questionnaire responses in August and September, 1995. The Department issued supplemental questionnaires in September and October, 1995. Responses to these questionnaires were received in October and November, 1995.

On August 25, 1995, the Department determined this investigation to be extraordinarily complicated due to the complexity of the transactions and novel issues presented as a result of this investigation being one of the first cases conducted since the implementation of the URAA. Consequently, the Department postponed the preliminary determination until no later than December 8, 1995 (60 FR 45154, August 30, 1995) (extended six additional calendar days to December 14, 1995 because of the federal government shutdown).

On October 11, 1995, the petitioners submitted a letter requesting that the Department treat Maktas and certain of its customers as affiliated parties pursuant to section 771(33) of the Act. The Department has determined, for the purposes of this preliminary determination, that there is no information on record to support the petitioners' claim that Maktas and certain of its customers should be treated as affiliated parties (*see* Concurrence Memorandum dated December 14, 1995).

Mandatory Respondent Selection

Section 777A(c) of the Act states that the Department shall calculate an individual dumping margin for each known exporter or producer of the subject merchandise, except where this approach is not practicable due to the large number of exporters or producers. Under this exception, the Department may limit its examination to: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters or producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Section 353.44(b)(1) of the Department's regulations states that the Department will normally examine not less than 60% of the volume or value of sales, while section 353.59(b)(1) provides for sampling when a significant volume of sales is involved.

The petitions filed against pasta from Italy and Turkey, listed 73 Italian companies and 15 Turkish companies as possible producers or exporters of pasta to the United States. Other information available to the Department indicated an equally large number of producers or exporters. Since, at the time of respondent selection, there was insufficient information on the record to employ statistically valid sampling techniques, the Department focused its selection on the producers and exporters accounting for the largest volume of exports to the United States (*see Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan* (58 FR 34585, (August 23, 1990)) and *Fresh Cut Roses from Colombia and Ecuador.* (60 FR 13958, (March 15, 1995)). Based on the administrative resources available to the Department and the anticipated inclusion of many complex issues related to new provisions of the Act, it was determined that the maximum total number of companies that could be handled in the parallel pasta investigations was ten. In a subsequent analysis of the volume of exports of individual companies from Italy and Turkey, it was determined that investigating ten companies would allow the Department to investigate 45 percent of the volume of exports from each country. In Italy, 45 percent was attained with the eight largest companies, while in Turkey 45 percent was attained with the two largest companies. A complete analysis of the respondent selection process is contained in a July 7, 1995, decision memorandum from Gary Taverman to Barbara Stafford.

Voluntary Respondents

Section 782(a) of the Act states that individual rates shall be calculated for firms which voluntarily provide information, except where the number for all such respondents is so large that the calculation of individual dumping margins for all such respondents would be unduly burdensome and would prevent the timely completion of the investigation. Based on the same reasoning that led the Department to limit the number of respondents in the investigations to ten companies (*i.e.* the large number of companies and administrative resource constraints), the Department determined that no voluntary respondents could be accepted unless one of the mandatory respondents did not participate. (*See* the July 7, 1995, decision memorandum from Gary Taverman to Barbara Stafford.) Potential voluntary respondents were provided with specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. Ultimately, no voluntary respondent attempted to fulfill the Department's criteria for consideration.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on December 11, 1995, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of an affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b), because our preliminary determination is affirmative, the respondents account for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are granting respondents' request and postponing the final determination.

Scope of Investigation

The scope of this investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk

or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

(1) On August 24, 1995, the petitioners requested that we expand the scope to cover all imports of non-egg dry pasta for the retail and the food service markets. We have determined that the scope should not be expanded. For a discussion of this decision, *see Preliminary Affirmative Countervailing Duty Determination: Certain Pasta from Turkey* (60 FR 53747, October 17, 1995) and Memorandum to Susan G. Esserman, Assistant Secretary for Import Administration dated October 10, 1995.

(2) On October 2, 1995, a U.S. importer of Italian pasta requested that the Department exclude ''organic pasta'' from the scope of the companion antidumping and countervailing duty investigations of certain pasta from Italy. If a similar request is made for Turkey, the Department will address it as stated in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy.*

Period of Investigation

The period of investigation (POI) is May 1, 1994, through April 30, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the ''Scope of Investigation'' section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire.

Targeted Dumping

On October 20, 1995, the petitioners requested that, for all respondents, the Department compare the transaction specific export prices in the United States market to weighted-average normal values, in accordance with the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. The petitioners' allegation rested on an analysis of average retail prices of selected brands of pasta, rather than on the export or constructed export prices of the respondents which were already on the record in the investigation and thus available to the petitioners. This request was denied by the Department on November 8, 1995, on the grounds that the allegation did not meet the requirements of section 777(A)(d)(1)(B) because it was not: (1) Based on exporter specific prices; (2) exporter specific; and (3) based on examination of ''comparable'' merchandise. *See* Memorandum from the Pasta Team to Barbara R. Stafford dated November 8, 1995.

Level of Trade

As set forth in section 773(a)(7)(A) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for differences in levels of trade if two conditions are met. First, there must be differences between the selling functions performed by the seller at the different levels of trade. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at different levels of trade in the market in which normal value is determined. When constructed export price is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a constructed export price offset when: (1) Normal value is at a different level of trade, and (2) the data available do not provide an appropriate basis for a level of trade adjustment.

In order to identify levels of trade, the Department must review information concerning selling functions of the exporter. In addition, a respondent seeking to establish a level of trade adjustment must demonstrate the appropriateness of such an adjustment. Therefore, in addition to the questions related to the level of trade in our July 12, 1995, questionnaire, on October 23, 1995, we sent each respondent supplemental questions related to level of trade comparisons and adjustments. We asked each respondent to establish any claimed levels of trade based on selling functions performed and services offered to each customer or customer class, and to document and explain any claims for a level of trade adjustment.

Upon review of each respondent's submissions on level of trade, and other related information on the record, we identified one or both of the following difficulties: (1) Not all of the selling functions performed were identified; (2) although certain selling functions were assigned to specific groups of customers, not all customers in some identified groups were provided the service.

In light of these concerns, we reviewed each response to identify all types of selling functions, both claimed and unclaimed, that had been provided. We subsequently consolidated the selling functions into four broad categories related to the sale of pasta: (1) Freight and delivery services; (2) advertising; (3) maintaining finished goods inventories to fill customer orders; and (4) other service programs (primarily handling rebate and warranty claims). We then analyzed each respondent's submissions to determine which selling function categories applied to each pasta sale made in the U.S. and Turkish market. We did this based on both the selling expenses reported for that transaction and the respondent's narrative descriptions. Finally, we created a computer program that assessed, on a transaction specific basis, whether or not services corresponding to the four selling function categories were provided.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale (as indicated by the level of trade codes established in the computer program). Where comparisons at the same level of trade were not possible, we attempted a comparison at the next most comparable level of trade. Any remaining unmatched U.S. sales were compared to sales in the comparison market without regard to level of trade.

Both Turkish respondents, Maktas and Filiz claimed a level of trade

adjustment for comparisons between different levels of trade. However, these level of trade adjustments were not allowed because none of the claimed adjustments were based on price differences between the two levels of trade.

The level of trade methodology employed by the Department in this preliminary determination is based on the facts particular to this investigation. As stated above, there is a new emphasis on function of the seller in determining level of trade, as well as new conditions for a level of trade comparison or adjustment. The Department intends, where appropriate, to request additional information prior to verification for its continuing analysis of this issue. The Department will continue to examine its policy for making level of trade comparisons and adjustments.

Fair Value Comparisons

To determine whether sales of pasta by the two Turkish respondents to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparisons to weighted-average NVs.

Turkey experienced an inflation rate of over 75 percent during the POI, as measured by the wholesale price index published in International Financial Statistics. In past cases, we have found economies with annual inflation rates of over 50 percent to be hyperinflationary. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732, January 6, 1994.) We determined, therefore, that Turkey's economy was hyperinflationary during the POI. Accordingly, to avoid the distortions caused by the effects of hyperinflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

Export Price

For both Filiz and Maktas we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and Constructed Export Price (CEP) methodology was not otherwise warranted based on the facts of this investigation.

For Maktas, we based EP on packed, FOB Turkish port prices to unaffiliated customers in the United States. We made deductions from the starting price (gross unit price), where appropriate, for foreign brokerage and handling and foreign inland freight. For Filiz we based EP on packed, FOB Turkish port and C&F prices charged to unaffiliated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, foreign inland insurance, and ocean freight.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent. Maktas reported one sale made during the POI to an affiliated party. Since this sale accounted for an insignificant portion of the total POI home market sales, we excluded this sale from our analysis. We calculated NV as noted in the ''Price to Price Comparisons'' and ''Price to CV Comparisons'' sections of this notice.

Cost of Production Analysis

Based on the allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether the respondents made home market sales during the POI at prices below their respective cost of production (COP) within the meaning of section 773(b) of the Act. *(See Initiation of Antidumping Duty Investigations: Certain Pasta from Italy and Turkey.)*

A. Calculation of COP

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. As noted above, we determined that the Turkish economy was hyperinflationary during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that respondents submit monthly COP figures based on the current production costs incurred during each month of the POI. We relied on the respondents' COP amounts except in the following specific instances wherein the reported costs were improperly valued:

Maktas. (1) Maktas excluded amounts reported as ''extraordinary'' expenses on its financial statements from its reported COP and constructed value (CV) figures. These expenses were comprised of annual plant cleaning costs as well as other amounts, the nature of which the company did not disclose in its response to our July 12, 1995 questionnaire. We typically consider costs associated with normal plant and equipment maintenance to be part of the cost of manufacturing (COM) and have therefore included these expenses in our calculation of COP.

(2) Maktas reduced its reported interest expense by amounts received in connection with foreign exchange gains. The company did not respond to our October 13, 1995 request for additional information regarding the nature of these gains. We therefore excluded Maktas' reported foreign exchange gains from the company's net interest expense calculation.

Filiz. (1) Filiz calculated its net interest expense using amounts from its unconsolidated financial statements. Since the Department's normal practice is to calculate interest expense on a consolidated basis, we adjusted the company's reported net interest expense to include the interest expense incurred by Filiz's parent company.

(2) Filiz reduced its reported interest expense by amounts received in connection with foreign exchange gains. However, because Filiz sourced its production inputs domestically during the POI, and since the company did not disclose the nature of these amounts, we concluded that the foreign exchange gains related to sales of merchandise by the company rather than to its purchases of inputs for pasta production. We therefore excluded Filiz's reported foreign exchange gains from the company's net interest expense calculation.

B. Test of Home Market Prices

We used the respondents' adjusted monthly COP amounts and the wholesale price index from the government of Turkey's State Institute of Statistics to compute an annual weighted average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been

made at prices below COP. On a product specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(c) where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded only the below-cost sales where such sales were found to be made within an extended period of time (in accordance with section 773(b)(2)(D) of the Act) and at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(B) of the Act). For each respondent, where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a) of the Act.

We found that, for certain pasta products, more than 20 percent of each respondent's home market sales were sold at below COP within an extended period of time in substantial quantities. Further we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis of determining NV, in accordance with section 773(b)(1). For those pasta products for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales databases. In accordance with sections 773(e)(2)(A) we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We calculated each respondent's CV based on the methodology described in the calculation of COP above. For selling expenses, we used the weighted-average home market selling expenses.

Price to Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based NV on home market prices. For Maktas, we calculated NV based on ex-warehouse or delivered prices to unaffiliated customers and made deductions, where appropriate, from the starting price for inland freight, inland insurance, discounts, and rebates. For Filiz, we calculated NV based on CIF prices to unaffiliated customers and made deductions, where appropriate, from the starting price for inland freight, inland insurance, discounts, and rebates. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs for both respondents. In addition, for both respondents, we adjusted for differences in the circumstances of sale, in accordance with section 773 (a)(6)(C)(iii) of the Act. These circumstances included differences in imputed credit expenses and advertising expenses. For both Filiz and Maktas, we recalculated credit expenses by deducting reported discounts from the gross unit price.

Price to CV Comparisons

Where, for Filiz, we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation''. For this preliminary determination, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determined that a fluctuation existed, we substituted the benchmark rate for the daily rate.

Further, section 773A(b) directs the Department to allow a 60 day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when the foreign currency is appreciating against the U.S. dollar. No adjustment period is warranted in this case, because the Turkish Lira generally remained constant or depreciated against the dollar during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain pasta from Turkey, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. However, the product under investigation is also subject to concurrent countervailing duty investigation. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(c)(1)(C) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsides, there is no reason to require a cash deposit or bond for that amount. The Department has determined, in its *Preliminary Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, that the product under investigation benefitted from export subsidies. To obtain the most accurate estimate of antidumping duties, and to fulfill our international obligations arising under the GATT, we are subtracting for deposit purposes the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation (14.72 percent and 19.80 percent for Filiz and Maktas, respectively) from the antidumping bonding rate for Maktas and Filiz. We are also subtracting from the ''All Others'' rate the cash deposit rate attributable to the export subsidies included in the countervailing duty investigation for All Others. In keeping with Article of 17.4 of the WTO Agreement on Subsidies and Countervailing Measures, the

Department will terminate the suspension of liquidation in the companion countervailing duty investigation of *Certain Pasta From Turkey,* effective February 14, 1995, which is 120 days after the date of publication of the preliminary determination. Accordingly, on February 14, 1996, the antidumping deposit rate will revert to the full amount calculated in this preliminary determination. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Bonding percentage
Filiz	10.44	0.00
Maktas	18.80	0.00
All Others	15.61	0.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than April 2, 1996, and rebuttal briefs, no later than April 5, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 9, 1996, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–463 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–505]

Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of New Shipper Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We preliminarily determine the net subsidy to be zero percent for Esmaltaciones San Ignacio S.A. (San Ignacio) for the period January 1, 1995 through June 30, 1995. If the final results remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from San Ignacio exported on or after January 1, 1995, and on or before June 30, 1995. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1986, the Department published in the Federal Register (55 FR 51139) the countervailing duty order on porcelain-on-steel cookingware from Mexico. On June 20, 1995 the Department received a request from San Ignacio for a new shipper administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended, (the Act), and in accordance with interim regulation 19 CFR 355.22(j)(2) (60 FR 25130 (May 11, 1995)). In its request, San Ignacio certified that it met the requirements set forth in the Act and interim regulations for new shippers.

We initiated the review, covering the period January 1, 1995 through June 30, 1995 (POR), on July 20, 1995 (60 FR 37426). The review covers one manufacturer/exporter of the subject merchandise, San Ignacio, and nine programs.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Programs Preliminarily Found Not To Be Used

We examined the following programs and preliminarily determine that the exporter of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Banco Nacional de Comercio Exterior, S.N.C. (Bancomext)

(B) Certificates of Fiscal Promotion (CEPROFI)

(C) PITEX

(D) Other Bancomext Preferential Financing

(E) State Tax Incentives

(F) Article 15 Loans

(G) NAFINSA FOGAIN-type Financing

(H) NAFINSA FONEI-type Financing

(I) FONEI

Preliminary Results of Review

For the period January 1, 1995 through June 30, 1995, we preliminarily determine the net subsidy to be zero for San Ignacio. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from San Ignacio exported on or after January 1, 1995, and on or before June 30, 1995.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from San Ignacio entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review (See Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review (60 FR 53165; October 12, 1995)).

Interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–464 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

August 1993 Tampa Bay Oil Spill: Notice of Availability and Request for Comments on a Draft Damage Assessment and Restoration Plan

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Commerce, United States Department of the Interior (DOI), and Department of Environmental Protection, State of Florida.

ACTION: Notice of availability of a draft damage assessment and restoration plan and of a 45-day period for public comment on the plan.

SUMMARY: Notice is given that the draft document entitled ''Draft Damage Assessment and Restoration Plan for the 1993 Tampa Bay Oil Spill, Volume I—Ecological Injuries'' is available for public review and comment. The document represents the first part (Volume I) of the draft damage assessment and restoration plan (Draft DARP) being developed by the State and Federal natural resource trustees to assess natural resource damages for the injury, loss, destruction and lost use of natural resources that resulted from the oil spill in Tampa Bay, Florida, following the August 10, 1993 collision of certain vessels in Tampa Bay. Volume I presents the methods proposed for use to restore and compensate for natural resources injuries and losses of an ecological nature. Volume I of the Draft DARP is consistent with Section 1006 of the Oil Pollution Act of 1990 (OPA), Chapter 376 of the Florida Statutes and the guidance provided by the Natural Resource Damage Assessment regulations at 43 CFR Part 11 (1994), as amended. Public review of this draft plan, as announced by this notice, is consistent with Section 1006 of OPA and 43 CFR 11.32(c) of those regulations.

DATES: Comments must be submitted in writing on or before March 4, 1996.

ADDRESSES: Requests for copies of Volume I of the Draft DARP should be sent to Jim Jeansonne of the National Oceanic and Atmospheric Administration (NOAA) Damage Assessment Center, 9721 Executive Center Drive N., Suite 134, St. Petersburg, FL 33702, or Jane Urquhart-Donnelly of the Florida Department of Environmental Protection (DEP), Office of Coastal Protection, 8407 Laurel Fair Circle, Rm. 214, Tampa, FL 33619. Volume I is also available for public review at the St. Petersburg Public Library, Main Library Reference Dept., 3745 9th Ave N., St. Petersburg FL during normal library hours. Written comments on the plan should be sent to either Jim Jeansonne of the NOAA Damage Assessment Center or to Jane Urquhart-Donnelly of the DEP Office of Coastal Protection at the same address as listed above.

FOR FURTHER INFORMATION CONTACT: Jim Jeansonne of the NOAA Damage Assessment Center, (813) 570–5391 or Jane Urquhart-Donnelly, (813) 744–6462.

SUPPLEMENTARY INFORMATION: On August 10, 1993, at approximately 5:45 a.m., the tank barge ''OCEAN 255'' and the tank barge ''B–155'' collided with the freighter ''BALSA 37'' just south of Mullet Key near the entrance of Tampa Bay, Florida. The OCEAN 255 caught fire upon impact and burned for approximately 18 hours. During that period, approximately 32,000 gallons of Jet A fuel, diesel, and gasoline were discharged from the OCEAN 255 into lower Tampa Bay. The B–155 was also damaged by the collision and discharged approximately 330,000 gallons of #6 fuel oil in the same vicinity. A number of different natural resources were eventually exposed to oil as a result of these discharges, including mangroves, seagrasses, salt marshes, birds, sea turtles, shellfish beds, bottom sediments, sandy shorelines and the estuarine water column, with a variety of direct injuries and lost uses of natural resources documented to have resulted from such exposure.

The incident is subject to the authority of OPA, 33 U.S.C. 2701–2761 (OPA), the Federal Water Pollution Control Act, 33 U.S.C. 1321 *et seq.* (FWPCA) and the Florida Pollutant Discharge and Control Act, Fla. Stat. 376.121. NOAA, the U.S. Department of the Interior, and the Florida Department of Environmental Protection are trustees for natural resources pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, OPA, the FWPCA, subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600–300.615, and, in the case of the Florida Department of

Environmental Protection, the Florida Pollutant Discharge and Control Act, Fla Stat. 376.121 (1994), and in the case of the Federal trustees, Executive Order 12777.

These State and Federal agencies (the co-trustees) previously determined that natural resources and resource services subject to their trust authority were injured or lost as a result of the August 1993 oil spill and that the injuries and losses were sufficient to warrant proceeding with an assessment of natural resource damages under the above authorities. That determination is documented in the ''Preassessment Screen and Determination for August 10, 1993 Tampa Bay, Florida Oil Spill'', of November 2, 1993. Volume I of the Draft DARP presents the assessment and restoration plan developed by the co-trustees to address the direct injuries to natural resources and the interim losses of ecological resource services caused by the spill. Volume I evaluates restoration alternatives for each category of ecological injury or loss and defines compensation for resource injuries based on necessary or appropriate restoration actions, wherever possible. Further, the draft plan contemplates the use of simplified, cost-effective procedures and methods to document and quantify resource injuries and losses, as feasible and appropriate to specific resource injuries or losses. Accordingly, proposed methods and procedures include the use of relevant scientific literature, scientifically based models, and focused injury determination or quantification studies, alone or in combination, depending on the specific injury or loss category.

The August 1993 oil spill also disrupted publicly important human uses of natural resources, however, assessment methods and restoration plans addressing public compensation for those lost natural resources uses will be outlined in the second part (Volume II) of the Draft DARP, currently being developed by the co-trustees.

Interested members of the public are invited to request a copy of Volume I of the Draft DARP from and to submit written comments on the plan to either Jim Jeansonne of NOAA's Damage Assessment Center, or to Jane Urquhart-Donnelly, at the same addresses given above. All written comments will be considered by NOAA, the Department of the Interior, and the Florida Department of Environmental Protection in finalizing the assessment and restoration plan for the ecological injuries and losses and will be included in the Report of Assessment issued at the conclusion of the assessment process.

Dated: December 21, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 96–455 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Special Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

January 11, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and Special Access Levels.

EFFECTIVE DATE: January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Special Access Levels are being established pursuant to Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits and Special Access Levels. Sublimits are established for products which are not subject to the terms of the Special Access Textile Program.

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 60 FR 65299, published on December 19, 1995).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 63512, published on December 11, 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 June 27, 1995 and August 9, 1995 MOUs, the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 11, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 23, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the restraint limits listed below.

Pursuant to Memoranda of Understanding dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia; and under the terms of the Special Access Textile Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish Special Access Levels for properly certified textile products in the following categories which are assembled in Colombia from fabric formed and cut in the United States and re-exported in the United States from Colombia during the twelve-month period which begins on January 1, 1996 and extends through December 31, 1996.

Category	Twleve-month limit
315	20,126,134 square meters.

Category	Twleve-month limit
352/652 (Special Access).	31,800,000 dozen.
352/652 (non-Special Access sublimit).	3,180,000 dozen.
443	124,249 numbers.
444 (Special Access	205,020 numbers.
444 (non-Special Access sublimit).	82,008 numbers.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 (Categories 315,443 and 444) and April 1, 1995 through December 31, 1995 (Categories 352/652) shall be charged against those levels of restraint to the extent of any refilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of December 5, 1995, shall be denied entry unless the Government of Colombia authorizes the entry and any charges to the appropriate specific limit. Any shipment which declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–615 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

January 11, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 23, 1996.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. A directive to reduce the limits for certain categories for carryforward used during 1995 will be published in the Federal Register at a later date.

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 60 FR 65299, published on December 19, 1995).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

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 the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 11, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 23, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Restraint limit
338/638	737,674 dozen.
339/639	877,832 dozen.
340/640	759,395 dozen.
342/642	534,404 dozen.
347/348/647/648.	1,817,844 dozen of which not more than 960,368 dozen shall be in Categories 647/648.
351/651	910,385 dozen.
352/652	9,500,000 dozen.
433	21,136 dozen.
442	71,761 dozen.
443	131,287 numbers.
444	71,761 numbers.
448	36,968 dozen.
633	111,426 dozen.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 and March 27, 1995 through December 31, 1995 (Categories 352/652) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), and 54 FR 50425 (December 6, 1989), effective on January 23, 1996, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the period January 1, 1996 through December 31, 1996:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
352/652	30,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.

Category	Guaranteed access level
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC, and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–616 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

January 11, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 23, 1996.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Jamaica and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to a Memorandum of Understanding dated December 8, 1993 between the Governments of the United States and Jamaica.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 1996 through December 31, 1996.

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 60 FR 65299, published on December 19, 1995).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

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 Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 11, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 23, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	577,813 dozen pairs.
338/339/638/639.	1,139,296 dozen.
340/640	532,764 dozen of which not more than 450,801 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	668,989 dozen.
345/845	165,075 dozen.
347/348/647/648.	1,229,727 dozen.
351/651	375,000 dozen.
352/652	1,837,444 dozen.
445/446	51,658 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC, and any administrative arrangement notified to the Textiles Monitoring Body.

Pursuant to the Memorandum of Understanding dated December 8, 1993 between the Governments of the United States and Jamaica; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1996 and extends through December 31, 1996.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.

Category	Guaranteed Access Level
347/348/647/648.	2,000,000 dozen.
351/651	1,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–617 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

January 16, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. 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 Governments of the United States and the Sultanate of Oman agreed to extend their Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended, for two consecutive one-year periods, beginning on January 1, 1996 and extending through December 31, 1997.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1996 period.

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 60 FR 65299, published on December 19, 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 bilateral agreement, 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

January 16, 1996.

Commissioner of Customs

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended, between the Governments of the United States and the Sultanate of Oman; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 23, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	150,000 dozen.
335/635	224,720 dozen.
338/339	466,294 dozen.
340/640	224,720 dozen.
341/641	168,540 dozen.
347/348	803,374 dozen.
647/648/847	344,500 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Sultanate of Oman.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–618 Filed 1–18–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committtee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 20, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Sign Kit, Contaminate

9905–01–363–0872
9905–01–363–0873
9905–01–363–0875
9905–01–363–0876
9905–01–363–0877
NPA: Georgia Industries for the Blind, Bainbridge, Georgia

Cup, Drinking, Styrofoam

M.R. 537
M.R. 539
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma

Services

Document Image Conversion

Naval Air Warfare Center
Aircraft Division
Patuxent River, Maryland
NPA: The St. Mary's County Developmental Center, Inc., Holloywood, Maryland

Laundry Service

Fort Richardson, Alaska
NPA: Portland Habilitation Center, Inc., Portland, Oregon

Laundry Service

VA Medical Center
Danville, Illinois
NPA: Human Resources Center of Edgar and Clark Counties Paris, Illinois

Mark J. Benedict,
Operations Analyst.

[FR Doc. 96–585 Filed 1–18–96; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 20, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 14, August 25, September 20, November 27, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 36266, 44320, 49263 and 58337) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action and does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Liner, Poncho, Wet Weather

8405–00–889–3683

Napkin, Junior Dispenser

8540–01–350–6419

Services

Grounds Maintenance

Naval Supply Center, SW Division & various activities, Naval Station, San Diego, California

Janitorial/Custodial

For following locations Anniston, Alabama:
Federal Building and U.S. Courthouse, 1129 Noble Street
Social Security Administration, 301 East 13th Street

Janitorial/Custodial

Pentagon; First Floor, All stairs and stairwells, elevators, escalators, Defense Protective Service Structures and Corps of Engineers Modular Buildings, Washington, DC

Janitorial/Custodial

James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Mark J. Benedict,
Operations Analyst.

[FR Doc. 96–584 Filed 1–18–96; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. See 16 CFR Parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than March 19, 1996.

ADDRESSES: Written comments should be captioned ''Children's Sleepwear, Collection of Information'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR Parts 1615 and 1616, call or write Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. The Standards

Children's sleepwear in sizes 0 through 6X manufactured for sale in or imported into the United States is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615). Children's sleepwear in sizes 7 through 14 is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616). The children's sleepwear flammability standards require that fabrics, seams, and trim used in children's sleepwear in sizes 0 through 14 must self-extinguish when exposed to a small open-flame ignition source.

The children's sleepwear standards and implementing regulations also require manufacturers and importers of children's sleepwear in sizes 0 through 14 to perform testing of products and to maintain records of the results of that testing. 16 CFR Part 1615, Subpart B; 16 CFR Part 1616; Subpart B.

The Commission uses the information compiled and maintained by manufacturers and importers of children's sleepwear to help protect the public from risks of death or burn injuries associated with children's sleepwear. More specifically, the Commission reviews this information to determine whether the products produced and imported by the firms comply with the applicable standard. Additionally, the Commission uses this information to arrange corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the children's sleepwear standards and implementing regulations under control number 3041–0027. OMB's most recent extension of approval will expire on March 31, 1996. The Commission proposes to request an extension of approval without change for the collection of information in the children's sleepwear standards and implementing regulations.

B. Estimated Burden

The Commission staff estimates that about 63 firms manufacture or import products subject to the two children's sleepwear flammability standards. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 1,650 hours on each of those firms. That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 103,950 hours.

The hourly wage for the testing and recordkeeping required by the standards and regulations is about $12, for an annual cost to the industry of $1,247,400.

The Commission will expend approximately one-half month of professional staff time reviewing and evaluating the records maintained by manufacturers and importers of children's sleepwear subject to the standards. The annual cost to the Federal government of the collection of information in the sleepwear standards and implementing regulations is estimated to be $2,800.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the children's sleepwear flammability standards and implementing regulations. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: December 18, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–453 Filed 1–18–96; 8:45 am]

BILLING CODE 6355–01–P

Request for Comments Concerning Proposed Reinstatement of Approval of a Collection of Information—Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed reinstatement of approval of a collection of information from manufacturers and importers of carpets

and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting a reinstatement of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than March 19, 1996.

ADDRESSES: Written comments should be captioned ''Carpets and Rugs'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed reinstatement of approval of the collection of information, or to obtain a copy of 16 CFR Parts 1630 and 1631, call or write Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. The Standards

Carpets and rugs which have one dimension greater than six feet, a surface area greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630). Carpets and rugs which have no dimension greater than 6 feet, a surface area not greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631).

Both of these standards were issued under the Flammable Fabrics Act (FFA) (15 U.S.C. 1291 et seq.). Both standards require that products subject to their provisions must pass a flammability test which measures resistance to a small, timed ignition source. Small carpets and rugs which do not pass the flammability test comply with the standard for small carpets and rugs if they are permanently labeled with the statement: ''FLAMMABLE (FAILS U.S. DEPARTMENT OF COMMERCE STANDARD FF 2–70): SHOULD NOT BE USED NEAR SOURCES OF IGNITION.''

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative tests.'' Many manufacturers and importers of carpets and rugs issue guaranties that the products they produce or import comply with the applicable standard. Regulations implementing the carpet flammability standards prescribe requirements for testing and recordkeeping by firms which issue guaranties. See 16 CFR Part 1630, Subpart B, and 16 CFR Part 1631, Subpart B.

The Commission uses the information compiled and maintained by firms which issue these guaranties to help protect the public from risks of injury or death associated with carpet fires. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The Office of Management and Budget (OMB) approved the collection of information in the regulations under control number 3041–0017. OMB's most recent extension of approval expired on April 30, 1995. The Commission now proposes to request a reinstatement of approval without change for the collection of information in the regulations.

B. Estimated Burden

The Commission staff estimates that about 120 manufacturers and importers of carpets and rugs issue guaranties for products subject to the flammability standards for carpets and rugs. The Commission staff estimates that the regulations will impose an average annual burden of about 530 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of carpets and rugs will be about 63,600 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $12, for an estimated annual cost to the industry of $763,200.

The Commission will expend approximately one-half month of professional staff time reviewing and evaluating the records maintained by manufacturers and importers of carpets and rugs. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $2,800.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the regulations implementing the flammability standards for carpets and rugs. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: December 18, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–454 Filed 1–18–96; 8:45 am]

BILLING CODE 6355–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 24, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11 a.m.

in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:45 a.m. at the same location and will include a summary of the Commission's recent retreat strategy, discussion of procedures relating to the Blue Mountain Power project and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact.

1. *Holdover Project: Lehigh County Authority - Western Lehigh Service Area D–92–13 CP.* An application for approval of a ground water withdrawal project to supply up to 86.4 million gallons (mg)/30 days of water to the applicant's Central Division distribution system from new Well Nos. 17 and 18, and to increase the existing withdrawal limit of all wells from 188 mg/30 days to 214 mg/30 days. The project is located in Upper Macungie Township, Lehigh County, Pennsylvania. This hearing continues that of December 6, 1995.

2. *Shieldalloy Metallurgical Corporation D–88–53 RENEWAL.* An application for approval of a ground water withdrawal and decontamination project to supply up to 17.86 mg/30 days of water from existing Well Nos. Layne, W–9, RW6S, RW6D and RIW2. Commission approval on June 29, 1989 was limited to five years. The applicant requests that the total withdrawal limit from all wells be limited to 17.86 mg/30 days. The project is located in Newfield Borough, Gloucester County, and Vineland City, Cumberland County, New Jersey.

3. *Washington Township Municipal Utilities Authority D–94–26 CP.* An application for approval of a ground water withdrawal project to supply up to 26 mg/30 days of water to the applicant's distribution system from new Well No. 18, and to increase the existing withdrawal limit of 203 mg/30 days from all wells to 248.2 mg/30 days. The project is located in Washington Township, Gloucester County, New Jersey.

4. *Lehigh Township Municipal Authority D–94–53 CP.* A project to construct a 0.3 million gallons per day (mgd) sewage treatment plant (Danielsville STP) to serve residential and commercial development in a portion of Lehigh Township. The STP will provide secondary biological treatment and discharge to Bertsch Creek, a tributary of the Lehigh River. The STP will be located approximately 700 feet south of State Route 946 and just to the west of Bertsch Creek near the community of Edgemont in Lehigh Township, Northampton County, Pennsylvania.

5. *Lehigh Township Municipal Authority D–94–54 CP.* A project to construct a 60,000 gallons per day (gpd) sewage treatment plant (Pennsville STP) to treat residential and commercial development in a portion of Lehigh Township. The proposed STP will provide secondary biological treatment and discharge to Indian Creek, a tributary of Hokendauqua Creek in the Lehigh River Watershed. The STP will be located approximately 500 feet south of State Route 248 adjacent to Indian Creek near the community of Pennsville, Lehigh Township, Northampton County, Pennsylvania.

6. *Crompton & Knowles Colors, Inc. D–95–8 (Revision 1).* A request to revise the applicant's recently approved 0.22 mgd industrial wastewater treatment plant (IWTP) expansion docket to increase the average monthly allowable copper concentration limits from 0.50 milligrams per liter (mg/l) to 1.0 mg/l. The applicant requests the limit on the basis of demonstration of best practicable treatment provided by its IWTP that serves the applicant's dyestuff and special chemical manufacturing operation. The plant is located in Robeson Township, Berks County, Pennsylvania and will continue to discharge to the Schuylkill River.

7. *Timber Lake Camp West Corporation D–95–15.* A project to construct a new 30,000 gpd STP to replace an existing 30,000 gpd subsurface sewage disposal system. The STP will continue to serve the applicant's summer camp occupied from July through August, and will discharge to a man-made lake on the camp property which is at the headwaters of Bascom Brook, a tributary of Willoemoc Creek, in the Town of Rockland, Sullivan County, New York.

8. *Upper Makefield Township D–95–23 CP.* An application for inclusion of an existing 0.1 mgd capacity STP in the DRBC Comprehensive Plan. The STP was approved via Docket No. D–84–40 on May 1, 1985, under Section 3.8 of the DRBC Compact and has been acquired by Upper Makefield Township from the previous private owner, Heritage Investment, Inc. The STP will continue to serve residential development in Upper Makefield Township, Bucks County, Pennsylvania. The applicant requests a transfer of Docket No. D–84–40 and proposes no changes from the existing docket other than ownership and inclusion in the Comprehensive Plan. The STP is located west of Taylorsville Road approximately one-half mile northwest of its intersection with Route 532 in Upper Makefield Township. The STP will continue to discharge to the Delaware River in Water Quality Zone 1E.

9. *City of Milford D–95–44 CP.* An application for approval of a ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's distribution system from new Well No. 3, and to retain the existing withdrawal limit from all wells of 64 mg/30 days. The project is located in the City of Milford, Kent and Sussex Counties, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Public Information Notice

Delaware River Basin Commission Strategy

On October 25, 1995 the Delaware River Basin Commission authorized its Executive Director to enter into an agreement with H. W. Hill & Associates to facilitate a retreat for the purpose of developing a policy level strategy to improve the performance of the Commission in meeting its goals and objectives. The retreat, conducted December 12–14, 1995, sought to promote dialogue and achieve consensus among the Commissioners and Commission executive staff.

Based on clear statements of purpose, scope and assumptions, the retreat process first identified specific problems. Next, objectives and action items were considered and prioritized to address each problem. Issues addressed included a review of Delaware River Basin Compact authorities and priorities, the need to assure consistent funding and reassessment of the Commission's drought operating plan. The Commissioners also focused on the need to define roles and responsibilities among the Commission, the parties to the 1954 U.S. Supreme Court Decree, the River Master, New York City, and the Delaware Estuary Program. Among other new initiatives, management principles and opportunities will be explored to improve communication among Commissioners and staff to enhance staff involvement. In addition, a communication strategy will be developed to broaden public involvement in Commission activities.

Other priority objectives include policy development on the water quality issues at Blue Marsh Reservoir and assessment of the use of Commission water charging funds and interest. Plans will be developed to address water supply and quality problems in high growth areas in the Basin and reservoir releases to sustain and improve fisheries. A strategic action plan will also be developed and will include an update of the Comprehensive Plan for the Basin. Other issues identified include assessing and eliminating unnecessary duplication between the Commission and the states, providing better opportunities for Governors and the Secretary of the Interior to participate in formulating policy and resolving major problems, reassessing relationships between the Commission and the federal agencies, and evaluating how to implement a Geographic Information System at the Commission.

A copy of the strategy including the list of problems, the objectives to address the problems, and a prioritized listing of objectives and the problems they address—together with the action items believed necessary to meet each objective—is being prepared. That document will be available sometime after the Commission's January 24, 1996 meeting. To obtain a copy, contact Susan M. Weisman at (609) 883–9500 ext. 203.

Dated: January 10, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–607 Filed 1–18–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 1996. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Pub. L. No. 94–163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective February 20, 1996 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act)[1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on January 5, 1995. (60 FR 1773). Effective [Insert date 30 days after publication], the cost figures published on January 5, 1995, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1996 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, and propane and kerosene prices found in this notice. The cost projections for heating oil, electricity and natural gas are found in the fourth quarter, 1995, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (95/4Q) and reflect the mid-price scenario. Projections for propane and kerosene are based on the *Short-Term Energy Outlook* net-of-tax projection for heating oil costs and the relative prices of those two fuels in 1992 (the most recent year available) in the *State Energy Price and Expenditure Report*, DOE/EIA–0376 (92). Both the *Short-Term Energy Outlook* and the *State Energy Price and Expenditure Report* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

The 1996 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective [Insert date 30 days from the date of publication]. They will remain in effect until further notice.

Issued in Washington, DC, January 11, 1996.

Brian T. Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[1] References to the ''Act'' refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. §§ 6291–6309.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1996)

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$25.21	8.6¢/kWh [2,3]	$.086/kWh
Natural gas	6.26	62.6¢/therm [4] or $6.43/MCF [5,6]	.00000626/Btu
Heating oil	6.63	$.92/gallon [7]	.00000663/Btu
Propane	9.84	$.90/gallon [8]	.00000984/Btu
Kerosene	7.39	$1.00/gallon [9]	.00000739/Btu

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 96–574 Filed 1–18–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Advisory Committee; Meeting Postponement

AGENCY: Department of Energy.

ACTION: Notice of meeting postponement.

SUMMARY: An open meeting of the Fusion Energy Advisory Committee that was scheduled to be held on January 18–19, 1996, at 9:00 a.m., at the Omni Shoreham Hotel in Washington, D.C., has been rescheduled due to the snow emergency. The meeting will be held on January 26–27, 1996, at the same location. This meeting was announced in the Federal Register on Wednesday, January 10, 1996. (61–FR–724).

Issued at Washington, D.C., on January 17, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–718 Filed 1–17–96; 2:32 pm]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–155–010, et al.]

Catex Vitol Electric, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

January 4, 1996.

Take notice that the following filings have been made with the Commission:

1. Catex Vitol Electric, L.L.C.; Powernet Corporation; National Power Management Company; Industrial Gas & Electric Services Company; Progas Power, Inc.; Ruffin Energy Services, Inc.; Utility Trade Corporation

[Docket Nos. ER94–155–010, ER94–931–006, ER95–192–004, ER95–257–004, ER95–968–001, ER95–1047–001, ER95–1382–001 (Not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 1, 1995, Catex Vitol Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–155–000.

On December 18, 1995, Powernet Corporation filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000.

On December 18, 1995, National Power Management Company filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–192–000.

On December 27, 1995, Industrial Gas & Electric Services Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–257–000.

On December 18, 1995, Progas Power, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–968–000.

On December 28, 1995, Ruffin Energy Services, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–1047–000.

On December 28, 1995, Utility Trade Corporation filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1382–000.

2. Commonwealth Edison Company

[Docket No. ER96–560–000]

Take notice that on December 8, 1995 Commonwealth Edison Company (ComEd) submitted four Service Agreements establishing Coastal Electric Services Company (Coastal) dated October 26, 1995, Cenergy, Inc. (Cenergy), dated November 3, 1995, Valero Power Services Company (Valero), dated November 6, 1995, and Missouri Public Service, a Division of UtiliCorp United Inc. (UtiliCorp), dated November 7, 1995. The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of November 8, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Coastal, Cenergy, Valero, UtiliCorp and the Illinois Commerce Commission.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. ER96–570–000]

Take notice that on December 11, 1995, Tucson Electric Power Company (Tucson) tendered for filing an Interchange Agreement, dated as of November 14, 1995 (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement sets forth certain operational procedures governing a point of interconnection between the parties' systems and provides for the purchase and sale between the parties of economy energy from time to time.

Tucson requests an effective date of December 15, 1995, and therefore requests waiver of the Commission's

regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER96–616–000]

Take notice that on December 18, 1995, Illinois Power Company (IPC), tendered for filing an Interchange Agreement between IPC and Western Gas Resources Power Marketing, Inc. (WGRPM). IPC states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between IPC and WGRPM.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER96–617–000]

Take notice that on December 18, 1995, Southern California Edison Company (Edison) tendered for filing a Letter Agreement (Letter Agreement) and associated operating procedures with the City of Anaheim (Anaheim). The Letter Agreement modifies the Rated Capability referenced in the Supplemental Agreement to the 1990 Integrated Operations Agreement for the integration of Anaheim's combustion turbine generating unit, Commission Rate Schedule No. 246.16. In addition, Edison requests that the Commission disclaim jurisdiction over the associated operating procedures.

Edison requests waiver of the Commission's 60 day notice requirements and an effective date of January 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Indiana Gas and Electric Company

[Docket No. ER96–618–000]

Take notice that on December 18, 1995, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing a proposed Interchange Agreement with Industrial Energy Applications, Inc. (Industrial).

The proposed revised Interchange Agreement will provide for the purchase, sale and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) Industrial Power Sales and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 3, 1996.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–625–000]

Take notice that on December 18, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated November 1, 1995, between Cinergy, CG&E, PSI and Industrial Energy Applications, Inc. (IEA).

The Interchange Agreement provides for the following service between Cinergy and IEA.

1. Exhibit A—Power Sales by IEA
2. Exhibit B—Power Sales by Cinergy

Cinergy and IEA have requested an effective date of January 1, 1996.

Copies of the filing were served on Industrial Energy Applications, Inc., the Iowa State Utilities Board, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–626–000]

Take notice that on December 18, 1995, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Cenergy Inc. under its CS–1 Coordination Sales Tariff.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER96–627–000]

Take notice that on December 18, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 22, 1995, between KCPL and Catex Vitol Electric L.L.C. (Catex). KCPL proposes an effective date of November 22, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Catex.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER96–628–000]

Take notice that on December 18, 1995, PECO Energy Company (PECO) filed a Service Agreement dated December 5, 1995, with General Public Utilities Service Corporation (GPU) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds GPU as a customer under the Tariff.

PECO requests an effective date of December 5, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to GPU and to the Pennsylvania Public Utility Commission.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER96–629–000]

Take notice that on December 19, 1995, Commonwealth Edison Company (ComEd) submitted Amendment No. 3, dated November 20, 1995, to the Electric Coordination Agreement (ECA), dated December 31, 1988, between ComEd and the City of Rochelle, Illinois (City). Amendment No. 3 revises Article 9, Term, of the ECA. The Commission has previously designated the ECA as ComEd's Rate Schedule FERC No. 36.

ComEd requests an effective date of November 20, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the City and the Illinois Commerce Commission.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–630–000]

Take notice that on December 19, 1995, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. The Washington Water Power Company

[Docket No. ER96–631–000]

Take notice that on December 19, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Sonat Power Marketing, Inc. Also submitted with this filing is a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of January 1, 1996.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER96–632–000]

Take notice that on December 19, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission three Firm Transmission Service Agreements with Koch Power Services, Inc. (Koch) dated November 29, 1995; Industrial Energy Applications, Inc. (Industrial) dated December 12, 1995; and Aquila Power Corporation (Aquila) dated December 12, 1995; and three Non-Firm Transmission Service Agreements with Koch dated November 29, 1995, Industrial dated December 12, 1995; and Aquila dated December 12, 1995, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of November 29, 1995 for the Agreements with Koch, and December 12, 1995 for the Agreements with Industrial and Aquila, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Koch, Industrial, Aquila, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–633–000]

Take notice that on December 19, 1995, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–634–000]

Take notice that on December 19, 1995, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Carolina Power & Light Company under Rate GSS.

Comment date: January 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER96–635–000]

Take notice that on December 19, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Heartland Energy Services.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Heartland Energy Services* pursuant to the tariff, and for the sale of capacity and energy by *Heartland Energy Services* to Missouri Public Service pursuant to *Heartland Energy Services'* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Heartland Energy Services.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–515 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–6–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

January 5, 1996.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. EC96–6–000]

Take notice that on December 18, 1995, Public Service Company of Colorado (Public Service) tendered for filing an Application for Authorization to Exchange/Acquire Transmission Facilities. Public Service states that the purpose of this filing is to engage in three separate transactions: an exchange with the Western Area Power Administration (Western) of a substation and a portion of a 115 kV transmission line for one circuit of another 115 kv double circuit transmission line; the acquisition by Public Service of a portion of a 69 kV transmission line from Intermountain Rural Electric Association, Inc; and the acquisition by Public Service of an undivided 25 percent share of the use and benefits of the transformation capacity of Western's Waterflow Substation.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER93–465–024]

Take notice that on December 11, 1995, Florida Power & Light Company tendered for filing its refund report in the above-referenced docket.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. LG&E Power Marketing, Inc.

[Docket Nos. ER94–1188–007 and ER94–1188–008]

Take notice that on December 4, 1995, and December 18, 1995, LG&E Marketing Inc. tendered for filing certain information as required by the Commission's letter order dated August 19, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

4. New England Power Company

[Docket No. ER95–267–007]

Take notice that on December 29, 1995, New England Power Company tendered for filing its compliance report in the above-referenced docket.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Energy Transfer Group, L.L.C.

[Docket No. ER96–280–000]

Take notice that on December 14, 1995, Energy Transfer Group, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Questar Energy Trading Company

[Docket No. ER96–404–000]

Take notice that on December 22, 1995, Questar Energy Trading Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER96–619–000]

Take notice that on December 18, 1995, Public Service Company of New Mexico (PNM) filed Modification No. 10 (Modification 10) to the San Juan Project Operating Agreement. Modification 10, executed by PNM and Tucson Electric Power Company (TEP), sets out the cost responsibilities of the owners of the San Juan Generating Station effective upon the purchase by Tri-State Generation and Transmission Association, Inc. (Tri-State) of Century Power Corporation's (Century) remaining interest in San Juan Unit 3.

PNM requests waiver of the Commission's notice requirements in order to allow Modification 10 to be effective as of January 2, 1996.

Copies of the filing have been served upon TEP, Century, Tri-State and the New Mexico Public Utility Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER96–620–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on December 18, 1995, tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Koch Power Services, Inc. (Koch). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Koch to receive transmission service under Wisconsin Electric's proposed FERC Point to Point Transmission Tariff, Rate Schedule STNF, currently pending under the Primergy—WMI Settlement, filed December 7, 1995.

Wisconsin Electric respectfully requests waiver of the Commission's requirements and an effective date of one week from the date of filing to facilitate economic transactions. Copies of the filing have been served on Koch, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER96–621–000]

Take notice that on December 15, 1995, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Hull Municipal Light Plant (Hull), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The required Exhibit A specifies the amount and duration of transmission service required by Hull under the Tariff.

Edison states that it has served the filing on Hull and on the Massachusetts Department of Public Utilities.

Edison requests a waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, November 1, 1995.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER96–622–000]

Take notice that on December 15, 1995, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Hingham Municipal Light Plant (Hingham), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The required Exhibit A specifies the amount and duration of transmission service required by Hingham under the Tariff.

Edison states that it has served the filing on Hingham and on the Massachusetts Department of Public Utilities.

Edison requests a waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, November 1, 1995.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER96–623–000]

Take notice that on December 18, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing the Glendale-Prior Lake Transmission Line Agreement between NSP and Cooperative Power Association (CPA). This agreement provides a second 69 kV source for the Prior Lake Substation by having NSP double circuit one mile of NSP's existing Black Dog-Scott County 116 kV transmission line. CPA also will build 0.5 mile of new 69 kV transmission line from the Prior Lake Substation to the double circuit transmission line, CPA will add a 69 kV breaker at the Glendale Substation, and CPA will add automatic transfer switches at the Prior Lake Substation.

NSP requests that the Commission accept the agreement effective December 18, 1995, and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Kentucky Utilities Company

[Docket No. ER96–624–000]

Take notice that on December 18, 1995, Kentucky Utilities Company (KU) tendered for filing a Supplement to the Interconnection Agreement between KU and the Tennessee Valley Authority (TVA), which provides for establishing a new delivery point to Powell Valley Electric Cooperative (PVEC) from KU's system near Calvin, Virginia. An Agreement between the parties dated March 22, 1951, which is on file with this Commission, Company Rate Schedule FERC No. 93, provides for additional delivery points to be established as needs arise.

Company states that copies of the filing have been sent to TVA, PVEC, the Public Service Commission of Kentucky and the Virginia State Corporation Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Power Company

[Docket No. ER96–637–000]

Take notice that on December 19, 1995, Ohio Power Company (OPCo), tendered for filing with the Commission proposed modifications to its FERC Rate Schedule No. 18. The modifications are designed to provide alternate curtailable service to Wheeling Power Company (WPCo).

OPCo proposes an effective date of February 1, 1996, and states that a copy of its filing was served on WPCo, the Public Service Commission of West Virginia and the Public Service Commission of Ohio.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER96–638–000]

Take notice that on December 20, 1995, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Electric Clearinghouse, Inc., Heartland Energy Services, Inc., Louis Dreyfus Electric Power, Inc., Baltimore Gas & Electric Company, Catex Vitol Electric, L.L.C.; LG&E Power Marketing Inc., Rainbow Energy Marketing Company, CMEX Energy, Inc. An effective date of November 20, 1995 for these service agreements, with waiver of notice, is requested.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER96–642–000]

Take notice that on December 20, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and Central Maine Power Company.

These Service Agreements specify that Central Maine Power Company has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and Central Maine Power Company to enter into separately scheduled transactions under which the Companies will sell to Central Maine Power Company capacity and/or energy as the parties may mutually agree.

The Companies request an effective date of November 28, 1995, as specified on each Service Agreement.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER96–643–000]

Take notice that on December 20, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly, the Companies) submitted two Transmission Service Agreements, dated December 5, and December 14, 1995, establishing Delhi Energy Services Inc. (Delhi) and Sonat Power Marketing Inc. (Sonat) as customers under the terms of the ERCOT Interpool Transmission Service Tariff.

The Companies request effective dates of December 5, and December 1, 1995, for the Service Agreements with Delhi and Sonat, respectively. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon Delhi, Sonat and the Public Utility Commission of Texas.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER96–644–000]

Take notice that on December 20, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (jointly, the Companies) submitted two Transmission Service Agreements, dated December 5, and December 14, 1995, establishing Delhi Energy Services Inc. (Delhi) and Sonat Power Marketing Inc. (Sonat), respectively, as customers under the terms of the Companies' SPP Interpool Transmission Service Tariff.

The Companies request effective dates of December 5, and December 1, 1995, for the service agreements with Delhi and Sonat, respectively. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon Delhi, Sonat, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Oklahoma Corporation Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER96–645–000]

Take notice that on December 20, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly, the Companies) submitted a Transmission Service Agreement, dated December 5, 1995, establishing Delhi Energy Services Inc. (Delhi) as a customer under the terms of the ERCOT Coordination Transmission Service Tariff.

The Companies request an effective date of December 5, 1995, for the service agreement. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing have been served upon Delhi and the Public Utility Commission of Texas.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Public Service Company

[Docket No. ER96–646–000]

Take notice that on December 20, 1995, Central Illinois Public Service Company (CIPS) submitted two Service Agreements, dated December 12, 1995, establishing Public Service Electric and Gas Company (PSE&G) and Sonat Power Marketing Inc. (Sonat) as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of December 12, 1995 for the service agreements with PSE&G and Sonat. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon PSE&G, Sonat and the Illinois Commerce Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER96–647–000]

Take notice that on December 20, 1995, Florida Power Corporation (the Company) filed rate schedule revisions to provide for changes to the estimate-and-true-up procedure in its Fuel Adjustment Clause. The changes were agreed to between Florida Power and its wholesale customers who purchase requirements service subject to that clause in order to eliminate large true-ups resulting from the present procedure. The Company requests waiver of the 60-day notice requirement so that the enclosed revisions may be allowed to become effective on December 1, 1995. The Company seeks waiver in order to avoid the large increase in monthly bills beginning with bills for December 1995 service which would otherwise occur because of true-ups under the old procedure.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER96–648–000]

Take notice that on December 21, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing an amendment to the contract for the purchase of electricity for resale (the Amendment) between Virginia Power and Old Dominion Electric Cooperative (Old Dominion). The Amendment provides for the continuation of the partial requirements service previously received by Old Dominion with certain changes in the terms and conditions. The principal changes involve defining specific exceptions to Old Dominion's partial requirements service and pricing a portion of Old Dominion's capacity requirements based on the costs of peaking capacity.

Virginia Power requests that the Amendment become effective on the commercial operation date of Clover Unit 2, a generating station jointly constructed and owned by Virginia Power and Old Dominion, or December 31, 1996, whichever occurs first.

Virginia Power states that copies of the filing have been served upon Old Dominion, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Arizona Public Service Company

[Docket No. ER96–649–000]

Take notice that on December 21, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Industrial Energy Applications, Inc.

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Appalachian Power Company

[Docket No. ER96–650–000]

Take notice that on December 21, 1995, Appalachian Power Company (APCo), tendered for filing with the Commission proposed modification to its Rate Schedule FPC No. 23. The modifications are designated to provide back-up and maintenance service to Kingsport Power Company (KgPCo).

APCo proposes an effective date of February 1, 1996, and states that a copy of its filing was served on KgPCo and the Tennessee Public Service Commission.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER96–651–000]

Take notice that on December 21, 1995, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Heartland Energy Services.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Heartland Energy Services* pursuant to the tariff, and for the sale of capacity and energy by *Heartland Energy Services* to WestPlains Energy-Kansas pursuant to *Heartland Energy Services'* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Heartland Energy Services.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. UtiliCorp United Inc.

[Docket No. ER96–652–000]

Take notice that on December 21, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Heartland Energy Services.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Heartland Energy Services* pursuant to the tariff, and for the sale of capacity and energy by *Heartland Energy Services* to WestPlains Energy-Colorado pursuant to *Heartland Energy Services* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Heartland Energy Services.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 96–516 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–653–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 11, 1996.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER96–653–000]

Take notice that on December 21, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Atlantic City Electric and Virginia Power, dated November 6, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Atlantic City Electric under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of this filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and the State of New Jersey Board of Public Utilities.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER96–654–000]

Take notice that on December 21, 1995, Florida Power & Light Company (FPL), tendered for filing a proposed Service Agreement with Electric Clearinghouse, Inc. for transmission service under FPL's Transmission Tariff No. 3.

FPL requests that the proposed Service Agreement be permitted to

become effective on January 1, 1996, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Catex Vitol Electric, L.L.C.

[Docket No. ER96–656–000]

Take notice that on December 21, 1995, Catex Vitol Electric, L.L.C. (CVE), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that CVE had completed all the steps for pool membership. CVE requests that the Commission amend the WSPP Agreement to include it as a member.

CVE requests an effective date of December 21, 1995, for the proposed amendment. Accordingly, CVE requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon counsel for the WSPP and the WSPP Executive Committee.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER96–657–000]

Take notice that on December 22, 1995, Boston Edison Company (Edison), filed a standstill agreement between itself and Reading Municipal Lighting Department (Reading) tolling the one-year claims limitation provision in Reading's Pilgrim power purchase contract with regard to disputes over the 1994 true-up bill. The purpose of the standstill agreement is to allow the parties to negotiate a settlement agreement regarding billing disputes regarding the true-up bill for 1994. The standstill agreement makes no other changes to the rates, terms and conditions of the contract between Reading and Edison.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER96–658–000]

Take notice that on December 22, 1995, Boston Edison Company (Boston Edison) of Boston, Massachusetts, in connection with Financial Accounting Standards No. 106 recognition of Postretirement Benefits Other than Pensions (PBOPs) on an accrual basis, tendered for filing a 1995 actuarial report and revised rate schedule supplements to its following contracts for the sale of power from the Pilgrim nuclear power plant.

Utility	Rate schedule No.	Entitlement (percent)
Commonwealth Electric Co	68	11.00000
Montaup Electric Co	69	11.00000
Boylston	77	.07463
Holyoke	79	.89552
Westfield	81	.22388
Hudson	83	.37313
Littleton	85	.14925
Marblehead	87	.14925
North Attleboro	89	.14925
Peabody	91	.22388
Shrewsbury	93	.37313
Templeton	95	.04478
Wakefield	97	.14925
West Boylston	99	.07463
Middleborough	102	.10448
Reading	113	.7462

The supplements ask the Commission for permission to use the 1995 actuarial study for actual 1995 billings and for estimated 1996 billings, and for permission to make future changes in PBOP's billings by filing annual actuarial data without filing a change in rate schedules. Boston Edison states that it has served the filing on each affected customer and on the Massachusetts Department of Public Utilities.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Bonneville Fuels Management Corporation

[Docket No. ER96–659–000]

Take notice that on December 22, 1995, Bonneville Fuels Management Corporation (BFMgt), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the Commission's order accepting the Rate Schedule for filing.

BFMgt intends to engage in electric power and energy transactions as a marketer. In these transactions, BFMgt proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–660–000]

Take notice that on December 22, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Koch Power Services, Inc. (KPSI).

Con Edison states that a copy of this filing has been served by mail upon KPSI.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER96–661–000]

Take notice that on December 22, 1995, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Power Sales Agreement between Dayton and Northern Indiana Power Service Company (NIPSCO).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, Dayton will provide to NIPSCO power and/or energy for resale.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–662–000]

Take notice that on December 22, 1995, New England Power Company (NEP), tendered for filing a Supplement to its Service Agreement with Fitchburg Gas & Electric Light Company under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Narragansett Electric Company

[Docket No. ER96–664–000]

Take notice that on December 22, 1995, The Narragansett Electric Company tendered for filing rate changes to its FERC Electric Tariff, Original Volume No. 1 for borderline sales.

Comment date: January 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 96–534 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–57–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1996 Zone EF Expansion Project and Request for Comments on Environmental Issues

January 11, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the 1996 Zone EF Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Northern Natural Gas Company (Northern) wants to expand the capacity of its facilities in Minnesota and Wisconsin to transport an additional 46,400 million British thermal units per day of natural gas to six local distribution companies. Northern seeks authority to:

- Abandon the 10,600-horsepower (hp) Owatonna Compressor Station in Steele County, Minnesota and construct and operate a new 10,600-hp Faribault Compressor Station in Rice County, Minnesota;
- Extend its 30-inch-diameter ''C-line'' loop by about 2.24 miles in Washington County, Minnesota;
- Increase the capacity of its Elk River system by extending the existing 20-inch-diameter Elk River branchline loop in two areas for a total of about 3.30 miles in Anoka County, Minnesota;
- Construct about 14.52 miles of 6-inch-diameter tie-over connecting the Paynesville and the Watkins branchlines in Stearns County, Minnesota;
- Install: (a) about 3.07 miles of 4-inch-diameter St. Michael branchline loop in Wright County, Minnesota; (b) about 5.01 miles of 8-inch-diameter Princeton branchline loop in Mile Lacs and Sherburne Counties, Minnesota; and (c) about 1.96 miles of 4-inch-diameter Monticello branchline loop in Wright County, Minnesota;
- Modify three meter stations in Anoka County, Minnesota and two meter stations in Wright County, Minnesota; and
- Modify a meter station in St. Croix County, Wisconsin and one meter station in Buffalo County, Wisconsin.

The general location of the project facilities are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 306 acres of land. Following construction, about 4 acres would be maintained as new above ground facility sites. The remaining 290 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention

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[1] Northern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

based on a preliminary review of the proposed facilities and the environmental information provided by Northern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The Rum River, a state designated wild and scenic river, would be crossed.
- The Sauk River and Mill Creek, protected waters of the State of Minnesota, would also be crossed.
- About 30.8 acres of wetlands and 25.7 acres of forest would be disturbed by construction.
- A 100-foot-wide construction right-of-way is proposed for the ''C-line'' Extension and Elk River Loop 2.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–57–000;
- Send a copy of your letter to: Mr. Bob Kopka, EA Project Manager, Federal Energy Regulatory Commission, 888 North Capitol St., N.E., PR–11.1, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before February 12, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Kopka at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project or more detailed project maps are available from Mr. Bob Kopka, EA Project Manager, at (202) 208–0282.

Lois D. Cashell,

Secretary.

[FR Doc. 96–517 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 460—Washington]

Tacoma Public Utilities; Notice of Intent to Hold Public Meetings in Hoodsport and Olympia, Washington, to Discuss the Draft Environmental Impact Statement (DEIS) for Relicensing of the Cushman Hydroelectric Project

January 11, 1996.

On December 15, 1995, the Draft Environmental Impact Statement for the Cushman Hydroelectric Project was distributed to all parties on the Commission's mailing list and a notice of availability was published in the Federal Register. The DEIS evaluates the environmental consequences of the proposed relicensing of the project. The project is located in Mason County, Washington near the town of Hoodsport.

Three public meetings have been scheduled to be held in Hoodsport and Olympia, Washington, for the purpose of allowing Commission Staff to present the major DEIS findings and recommendations. Interested parties will have an opportunity to give oral comment on the DEIS for the Commission's public record. Comments will be recorded by a court reporter. Individuals will be given up to five minutes each to present their views on the DEIS.

Meeting Dates, Times & Locations

Wednesday, January 31, from 7:00 pm–11:00 pm

Location: Hoodsport Firehall, Hoodsport, Washington 2 blocks west of Hwy 101 on Finch Creek Road; attached to and directly behind Hoodsport Fire Station.

Thursday, February 1, from 9:30 am–12:30 pm

Location: Ramada Inn Governor's House, 621 S. Capitol Way Olympia, Washington; take Route 5 to exit #105; follow signs to State Capitol; through East Campus Tunnel; turn right on Capitol Way; go six blocks to hotel.

Thursday, February 1, from 7:00 pm–11:00 pm

Location: Ramada Inn Governor's House, 632 S. Capitol Way, Olympia, Washington.

Comments may also be submitted in writing, addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Reference should be clearly made to the Cushman Project, No. 460. All comments must be received by February 13, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–520 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1984–054, et al.]

Hydroelectric Applications: Wisconsin River Power Authority, et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Removal of Land from Project Boundary.

b. *Project No.:* 1984–054.

c. *Dates Filed:* September 12, 1995 and November 1, 1995.

d. *Applicant:* Wisconsin River Power Authority (WRPA).

e. *Name of Project:* Castle Rock-Pentenwell Project.

f. *Location:* The parcel is on the north side of highway 21, about ¼ mile east of the Wisconsin River in Adams County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Richard L. Hilliker, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3722.

i. *FERC Contact:* John K. Hannula (202) 219–0116.

j. *Comment Date:* February 8, 1996.

k. *Description of Application:* WRPA proposes to sell 5 acres of project land to Mr. Walter Buchanan and remove the land from the project boundary.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. *Type of Application:* Petition for Declaratory Order.

b. *Docket No:* DI96–2.
c. *Date Filed:* 12/15/95.
d. *Applicant:* The Collinsville Company.
e. *Name of Project:* Collinsville (Upper) Project.
f. *Location:* River Mile 41 on the Farmington River, in Hartford and Litchfield Counties, Collinsville, CT.
g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).
h. *Applicant Contact:* Barbara Perry, President, The Collinsville Company, 10 Front Street, Collinsville, CT 06022, (203) 693–8845.
i. *FERC Contact:* Diane M. Murray, (202) 219–2682.
j. *Comment Date:* February 12, 1996.
k. *Description of Project:* The project consists of: (1) A reservoir with a surface area of 55 acres and a total volume of 350-acre-feet at elevation 289.2 feet msl; (2) an 18-foot-high stone masonry dam owned by the Connecticut Department of Environmental Protection; (3) eight slide gates that feed the Collinsville Company Forebay; (4) a 60-foot-long penstock located off of the upper canal; (5) a powerhouse with a total generating capacity of 180 Kw; (6) a tailrace canal to Farmington River; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Used for power supply for the various tenants in the Collinsville Company complex.
m. This notice also consists of the following standard paragraphs: B, C1, and D2.

3a. *Type of Application:* Transfer of License.
b. *Project No.:* 10204–018.
c. *Date Filed:* December 1, 1995.
d. *Applicants:* Northern Wasco County People's Utility District and Public Utility District No. 1 of Klickitat County.
e. *Name of Project:* McNary Dam Washington Shore Fishway.
f. *Location:* On the Columbia River, in Benton County, Washington.
g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).
h. *Applicant Contact:* Harold E. Haake, Special Projects Manager, Northern Wasco County PUD, P.O. Box 621, The Dalles, OR 97058, (503) 296–2226.
i. *FERC Contact:* Regina Saizan, (202) 219–2673.
j. *Comment Date:* February 12, 1996.
k. *Description of the Request:* Northern Wasco County People's Utility District (NWCPUD), licensee, and the Public Utility District No. 1 of Klickitat County request that the license for the McNary Dam Washington Shore Fishway Project be transferred from NWCPUD to NWCPUD and the PUD No. 1 of Klickitat County (joint owners).
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. *Type of Application:* Major New License (Notice of Tendering).
b. *Project No.:* 1975–014.
c. *Date Filed:* December 20, 1995.
d. *Applicant:* Idaho Power Company.
e. *Name of Project:* Bliss.
f. *Location:* On the Snake River, at river mile 560 from the confluence with the Columbia River in Gooding, Twin Falls, and Elmore Counties, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).
h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.
i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.
j. *Brief Description of Project:* The project consists of: an 84-foot-high, 364-foot-long and a crest elevation of 2,655 feet mean sea level concrete dam, four intakes and four 22-foot-diameter penstocks, and a powerhouse at the base of the dam with an installed capacity of 75,038 kilowatts.
k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.
l. In accordance with section 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

5a. *Type of Application:* Major New License (Notice of Tendering).
b. *Project No.:* 2061–004.
c. *Date Filed:* December 20, 1995.
d. *Applicant:* Idaho Power Company.
e. *Name of Project:* Lower Salmon Falls.
f. *Location:* On the Snake River, at river mile 573 from the confluence with the Columbia River in Gooding and Twin Falls Counties, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).
h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.
i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.
j. *Brief Description of Project:* The project consists of: a concrete powerhouse at the right bank of the river with an installed capacity of 60,200 kilowatts, a gated concrete spillway, a concrete overflow section, a concrete fish ladder, a reservoir, and two primary transmission lines.
k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.
l. In accordance with section 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

6a. *Type of Application:* Major New License (Notice of Tendering).
b. *Project No.:* 2777–007.
c. *Date Filed:* December 20, 1995.
d. *Applicant:* Idaho Power Company.
e. *Name of Project:* Upper Salmon Falls.
f. *Location:* On the Snake River, at river mile 580 from the confluence with the Columbia River in Gooding and Twin Falls Counties, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).
h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.
i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.
j. *Brief Description of Project:* The project consists of: a main diversion dam, two canals, and two power plants

with a total installed capacity of 32,460 kilowatts.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with section 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 11, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–513 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–117–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

January 4, 1996.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP96–117–000]

Take notice that on December 21, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–117–000, a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate an existing delivery tap on Line AC in Arkansas, for delivery of natural gas to ARKLA, a distribution division of NorAm Energy Corporation (ARKLA). NGT makes such request, under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT specifically proposes to use the existing delivery tap on Line AC in Hot Springs County, Arkansas for deliveries to ARKLA, for ARKLA's service to a consumer other than the right-of-way grantor for whom the tap was originally installed. It is estimated that approximately 170 MMBtu will be delivered through this tap annually and 2 MMBtu on a peak day. NGT indicates that the volumes to be delivered are within ARKLA's existing entitlements.

Comment date: February 20, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Transwestern Pipeline Company

[Docket No. CP96–119–000]

Take notice that on December 22, 1995, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–119–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale transmission facilities located in Pecos County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transwestern proposes to abandon by sale to Chevron U.S.A. Inc. (Chevron) 48.31 miles of 20-inch pipeline, 3.44 miles of 6-inch pipeline, and 2 farm taps, all located in Pecos County. It is stated that the facilities are part of Transwestern's West Texas Lateral transmission system and were installed in 1959 under Commission authorization in Docket No. G–14871, et al., to gain access to gas produced in the Puckett Field in Pecos County for sale to the California market. It is asserted that because of declining production, Transwestern has terminated its purchases from the Puckett Field and abandoned other facilities associated with it. It is explained that Chevron would purchase the facilities for $3.6 million, acting by and through its Warren Petroleum Company (Warren) division. It is stated that Warren would continue using the facilities as part of its gathering system. It is further stated that Warren would continue to offer service to the farm tap customers comparable to what they are presently receiving from Transwestern. It is asserted that the proposed abandonment would not impair Transwestern's existing service obligations and would not adversely affect the operation of Transwestern's mainline facilities.

Comment date: January 25, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP96–125–000]

Take notice that on December 29, 1995, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an application pursuant to Sections 7(b) and 7(c) for authorization to replace certain facilities located in Columbia Gas' Pavonia Storage Field located in Ashland and Richfield Counties, Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas indicates that, as part of its objective to ensure reliable operation of its pipeline system, it has initiated a program to install on-line pigging facilities, consisting of bi-directional pig launchers and receivers in its existing storage fields. Columbia Gas also indicates that in certain of its fields the installation of the pigging facilities will necessitate the replacement of short sections of telescoped pipelines to provide longer lengths of uniform pipe

diameter to facilitate the utilization of intelligent pigs.

Columbia Gas states that, as part of this program, Columbia Gas proposes to replace approximately 1.4 miles of 12, 16 and 20-inch pipeline with approximately 1.4 miles of 20-inch pipeline and 0.002 miles of 12-inch pipeline in its Pavonia Storage Field. In addition, Columbia Gas also proposes to construct a bi-directional pig launcher and receiver on its Line SL–2444 and replace or remove various appurtenances, including but not limited to valves and drips.

Columbia Gas estimates a total construction cost of $2,284,000, and indicates that the costs will be financed with funds generated from internal sources.

Comment date: January 25, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP96–127–000]

Take notice that on December 29, 1995, Columbia Gas Transmission Corporation (Columbia), Post Office Box 1273, Charleston, West Virginia, 25325–1273, filed in Docket No. CP96–127–000 an abbreviated application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA), as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests NGA Sections 7(c) and 7(b) authorization for the following:

The construction and operation of approximately 7.0 miles of storage pipelines and appurtenant facilities consisting of approximately 0.5 miles of 12-inch pipeline, 1.0 miles of 10-inch pipeline, 0.8 miles of 8-inch pipeline, 2.6 miles of 6-inch pipeline, and 2.1 miles of 4-inch pipeline. Columbia indicates that the abandonment of the facilities being replaced consists of approximately 7.5 miles of existing storage pipeline and appurtenances within the Lanham (X–2) Storage Field located in Kanawha and Putnam Counties, West Virginia.

Columbia states that it does not request authorization for any new or additional service. Columbia indicates that the segments of pipeline to be replaced have become physically deteriorated to the extent that replacement is deemed advisable. It is further indicated that the estimated cost of the proposed construction is $5,000,000.

Comment date: January 25, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Mississippi River Transmission Corporation

[Docket No. CP96–129–000]

Take notice that on December 29, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP96–129–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add four delivery points to serve Arkla, a division of NorAm Energy Corporation under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to add four 2-inch delivery taps and appurtenant facilities to serve Arkla along MRT's 12-inch Newport Loop in Jackson County, Arkansas. The taps would be located at Mile Posts 203.1, 206.2, 208.0 and 209.8 of MRT's Newport Loop. MRT estimates that the total cost of the proposed facilities will be $20,000, which would be reimbursed by Arkla. MRT states that Arkla would install and own a metering and regulating station and appurtenant facilities at each of the four locations. MRT estimates that it would deliver up to 825 MMBtu of natural gas per day and 30,010 MMBtu on an annual basis at the four delivery points. MRT states that the volumes that would be delivered would be within Arkla's certificated entitlements.

Comment date: February 20, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–514 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–392–000]

Energy West Power Company, LLC; Notice of Issuance of Order

January 11, 1996.

On November 17, 1995, Energy West Power Company, LLC (EWPC) submitted for filing a rate schedule under which EWPC will engage in wholesale electric power and energy transactions as a marketer. EWPC also requested waiver of various Commission regulations. In particular, EWPC requested that the Commission grant blanket approval under 18 CFR Part 34

of all future issuances of securities and assumptions of liability by EWPC.

On December 28, 1995, pursuant to delegated authority, the Director, Division of Applications, Officer of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EWPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EWPC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EWPC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 29, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426

Lois D. Cashell,

Secretary.

[FR Doc. 96–538 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–182–000]

Enerserve, L.C.; Notice of Issuance of Order

January 11, 1996.

On October 27, 1995, as amended November 27, 1995, Enerserve, L.C. (Enerserve) submitted for filing a rate schedule under which Enerserve will engage in wholesale electric power and energy transactions as a marketer. Enerserve also requested waiver of various Commission regulations. In particular, Enerserve requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Enerserve.

On December 28, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Enerserve should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Enerserve is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security or another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Enerserve's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 29, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–537 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–000 and RP95–242–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

January 11, 1996.

Take notice that an informal settlement conference will be convened in these proceedings on Thursday, January 18, 1996, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–0053.

Lois D. Cashell,

Secretary.

[FR Doc. 96–536 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–130–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 11, 1996.

Take notice that on December 29, 1995, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–130–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205, 157.212, and 157.216(b) for authorization to abandon certain facilities in Arkansas, and to construct and operate certain facilities in Arkansas in accordance with the authority granted to NorAm in its blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

NorAm specifically proposes to abandon one 2-inch U-Shape meter station located on NorAm's Line AM–145 in Arkansas and replace it with one 3-inch L-Shape meter station to be located in Jefferson County, Arkansas. NorAm states that no service will be abandoned. NorAm states that these facilities are necessary to accommodate a request from Arkla for increased volumes. NorAm estimated the volumes to be delivered through these facilities are approximately 876,000 MMBtu annually and 4,800 MMBtu daily. NorAm states that the estimated cost of construction is $45,943 and Arkla will reimburse NorAm $30,560.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–519 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–012–M

[Docket No. CP96–123–000]

Northern Natural Gas Company; Notice of Application

January 11, 1996.

Take notice that on December 27, 1995, Northern Natural Gas Company (Northern), 1111 S. 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–123–000 an application pursuant to Section 7(c) of the Natural Gas Act for a blanket certificate authorizing the automatic abandonment of certain small volume meter stations (farm taps), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it is requesting the Commission to expand the automatic authorizations under its blanket certificate to include abandonment authority in certain instances, that would allow Northern to remove, and report the removal of facilities, when service has not been provided through a farm tap for 12 months or longer, or when a written request has been received from a customer requesting the removal of a farm tap.

Northern states further that on average, it receives requests to abandon approximately 40 farm taps per year and that the requested authorization expansion would relieve Northern of an administrative burden.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before February 1, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–518 Filed 1–18–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5231–3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the Office of Federal Activities has not prepared the Notice of Availability, with comment due dates, for Environmental Impact Statements filed with the Environmental Protection Agency since the Federal Register publication on December 15, 1995. Preparation of this Notice is now in progress with publication on January 26, 1996.

Dated: January 16, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–669 Filed 1–18–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5400–6]

Public Meetings of the Storm Water Phase II Advisory Subcommittee and Urban Wet Weather Flows Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening two separate public meetings: (1) The Storm Water Phase II Advisory Subcommittee meeting on January 29–30, 1996 and (2) the Urban Wet Weather Flows (UWWF) Advisory Committee meeting on January 31–February 1, 1996. These meetings are open to the public without need for advance registration. The Phase II Advisory Subcommittee will: (1) Evaluate and examine options for the storm water Phase II program; (2) continue to explore issues related to small construction; and (3) hear and participate in a demonstration of the Point Source Information Provision and Exchange System (PIPES) electronic bulletin board. The UWWF Advisory Committee will continue the discussion on issues related to the three work group areas: storm water Phase I improvements; water quality standards; and watershed approach. Please accept our apologies for the lateness of this notification.

DATES: The Storm Water Phase II meeting will be held on January 29–30, 1996. The January 29 meeting will begin promptly at 9:00 a.m. EST and end at approximately 5:30 p.m. On January 30, the meeting will begin at 8:30 a.m. and end at approximately 4:00 p.m. The UWWF Advisory Committee meeting will be held on January 31–February 1, 1996. On January 31, the meeting will begin at approximately 10 a.m. EST and run until approximately 6:30 p.m. On February 1, the meeting will run from about 8:00 a.m. until 3:30 p.m.

ADDRESSES: Both meetings will be held at the Marriott Crystal Gateway, 1700 Jefferson Davis Highway (Route 1), Arlington, Virginia. The Marriott Crystal Gateway's telephone number is (703) 920–3230. A block of rooms are reserved from Sunday, January 28 through Friday, February 2. The rooms are listed

under ''EPA storm water and urban wet weather meeting.''

FOR FURTHER INFORMATION CONTACT: For the Phase II Subcommittee meeting, contact George Utting, Acting Storm Water Phase II Matrix Manager, Office of Wastewater Management, at (202) 260–9530.

For the UWWF Advisory Committee meeting, contact William Hall, Urban Wet Weather Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov.

Dated: January 16, 1996.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 96–717 Filed 1–18–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 96–1 and DA 96–2]

Procedures for the Filing of Documents That Were Due During the Government Shutdown or During the Weather Emergency

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: The Commission's Managing Director, by two Public Notices (DA 96–1, released January 5, 1996, and DA 96–2, released January 11, 1996), announced procedures for the filing of documents that were due to be filed with the Commission during the time that it was closed due to lack of appropriations (December 18, 1995 through January 5, 1996) and due to a weather emergency (January 8, 1996 through January 10, 1996).

DATES: Any documents that were due to be filed with the Commission while it was closed or that were due on January 11 and 12, 1996, are due no later than 5:30 p.m. on Tuesday, January 16, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William F. Caton, Acting Secretary, 202–418–0300.

SUPPLEMENTARY INFORMATION: By Public Notice (DA 96–1) released January 5, 1996, the Managing Director announced procedures for the filing of documents that were due to be filed with the Commission during the time that it was closed due to be filed with the Commission during the time that it was closed due to lack of appropriations (December 18, 1995 through January 5, 1996). Due to a weather emergency, the FCC remained closed from January 8, 1996 through January 10, 1996.

On January 11, 1996, the Managing Director announced, by Public Notice (DA 96–2) that any documents that were due to be filed with the Commission (at its headquarters, Gettysburg, PA, or Mellon Bank) while it was closed, whether for the budget-related shutdown or the subsequent weather emergency, will be due no later than 5:30 p.m. on Tuesday, January 16, 1996. To this extent, Section 1.4(j) of the Commission's rules, 47 CFR § 1.4(j), which would otherwise require such filings on the first business day after a shutdown, WAS WAIVED in order to facilitate an orderly reopening. Additionally, in light of the inclement weather, filings normally due on January 11 and 12, 1996, are also due on January 16, 1996. The January 11, 1996 Public Notice supersedes the January 5, 1996 Public Notice.

Documents received at the Commission's headquarters, at Mellon Bank or at the Commission's Gettysburg offices via mail from December 18, 1995 through January 10, 1996, will be deemed filed on January 11, 1996, the first day that the Commission has reopened.

This Public Notice affects only due dates for filings with the Commission that were due during the time that the Commission was closed or due on January 11–12, 1996. It does not affect due dates for the filing of other documents and does not affect the effective dates of Commission actions or other events. These matters may be dealt with separately by the Commission or its Bureaus and Offices.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

[FR Doc. 96–503 Filed 1–18–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011522.

Title: Mediterranean Shipping Co./Flota Mercante Grancolombia Space Charter and Sailing Agreement.

Parties: Flota Mercante Grancolombiana S.A., Mediterranean Shipping Co.

Synopsis: The proposed Agreement permits the parties to charter space on each others vessels and to rationalize their sailings in the trade between ports in the United States in the East Coast and Gulf and inland and coastal points in the United States served via those ports, on the one hand, and ports in Colombia, Ecuador, Peru and Chile and inland and coastal points served via those ports (including points in Bolivia and Argentina) on the other hand. The parties have requested a shortened review period.

Agreement No.: 203–011463–001.

Title: East Coast North America to West Coast of South America and Caribbean Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A., Compania Chilena De Navegacion Interoceanica S.A., Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment extends the term of the Agreement through December 31, 1996, and reflects the deletion of Lykes Bros. Steamship Co., Inc. as a party to the Agreement.

Dated: January 11, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–466 Filed 1–18–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 610]

Research Program Project Grants for Biomechanics and Individual Grants for Injury Research for Acute Care, Biomechanics, Disability Prevention, and Primary Prevention of Unintentional Injuries; Notice of Availability of Funds for Fiscal Year 1996

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for Injury Prevention and Control Research Grants for fiscal year (FY) 1996. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries. (To order a copy of ''Healthy People 2000,'' see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 391, 392, and 394 of the Public Health Service Act (42 U.S.C. 241, 280b, 280b–1 and 280b–3). Program regulations are set forth in Title 42 CFR Part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments and State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, child care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $2.7 million is expected to be available for injury research grants that include funding for projects that address biomechanics, unintentional injury prevention, acute care, and the prevention of secondary conditions in disabled persons. It is expected that the awards will begin on or about September 1, 1996, and will be made for a 12-month budget period within the appropriate (see below) project period. Funding estimates may vary and are subject to change.

In the area of biomechanics, $1,300,000 total is available to support one or two individual (RO–1 type) projects for up to three years funding at $250,000 per year (including both direct and indirect costs) and/or up to three research program project grants (RPPG) for up to three years funding at $350,000 per year (including both direct and indirect costs). Applications that exceed the funding caps (i.e., $250,000 for RO–1 and $350,000 for RPPG proposals) will be excluded from the competition and returned to the applicant. Awards will be made for a 12-month budget period within a project period not to exceed three years.

For research projects targeted at (1) unintentional injury prevention, and (2) acute care research, $800,000 total is available to support up to three RO–1 grants for primary prevention of unintentional injuries and one for acute care injury research. Each RO–1 project will be supported for up to two years of funding at $200,000 per year (including both direct and indirect costs). Applications that exceed the funding cap of $200,000 will be excluded from the competition and returned to the applicant. Awards will be made for a 12-month budget period within a project period not to exceed two years.

For research projects targeted at preventing secondary conditions among persons with injury-related disabling conditions, $600,000 is available for two R0–1 projects for up to three years of funding at $300,000 per year (including both direct and indirect costs). Applications that exceed the funding cap of $300,000 will be excluded from the competition and returned to the applicant. Awards will be made for a 12-month budget period within a project period not to exceed three years.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

The specific program priorities for these funding opportunities are outlined with examples in this announcement under the subheading, Programmatic Priorities. Grant funds will not be made available to support the provision of direct care services.

Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, if funds are available, continuation awards may be eligible for increased funding to offset inflationary costs.

Purpose

The purposes of this program are to:

A. Support injury prevention and control research on priority issues as delineated in ''Injury Control in the 1990s: A National Plan for Action''; ''Healthy People 2000''; ''Injury In America''; ''Injury Prevention: Meeting the Challenge''; and ''Cost of Injury.''

B. Encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

C. Evaluate current and new intervention methods and strategies for the prevention and control of injuries.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research (as previously defined) on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.

D. An explanation as to what extent research findings will lead to feasible, cost-effective injury interventions.

E. The ability to carry out injury control research project.

F. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading Programmatic Priorities.

Programmatic Priorities

Grant applications for acute care, biomechanics, disability prevention, and primary prevention of unintentional

injuries are sought. The focus of grants should reflect the broad-based need to control injury morbidity, mortality, disability, and costs. Examples of possible projects listed under the priority areas below are not exhaustive. Innovative alternative approaches are encouraged.

In *biomechanics,* there is special programmatic interest in traumatic brain and spinal cord injury (TBI/SCI). This interest includes the biomechanical evaluation of intervention concepts and strategies (e.g., multi-use recreational helmets, mouth and face protection devices for athletes, energy absorbing playground surfaces, hip pads, motor vehicle side impact and rollover countermeasures, etc.); development of models to elucidate injury physiology and pharmacologic, surgical, rehabilitation, and other interventions; defining human tolerance limits for injury among children, women, the chronically ill and older persons; improvements in injury assessment technology; and understanding impact injury mechanisms and quantifying injury-related biomechanical responses for critical areas of the human body (e.g., brain and vertebral injury with spinal cord involvement). Consideration will also be given to the biomechanics of thoracic and abdominal viscera, musculature and joints including the articular cartilage, tendons and ligaments.

In *acute care,* there is special programmatic interest in intensifying the role of the emergency department and in-patient hospital trauma services in regard to hospital-based public health surveillance and prevention of traumatic injuries (e.g., emergency department surveillance systems or inpatient trauma registries that provide comprehensive coverage of a defined population and that identify cause-specific patterns of injury that are amenable to preventive countermeasures). In acute care settings, identifying underlying risk factors for injury and intervening to reduce or eliminate them can help minimize the impact of violence, substance abuse, and other factors associated with injury recidivism (e.g., screening and brief interventions for injured patients with mild to moderate alcohol problems, identification and referral of injured patients with severe alcohol problems to specialized alcohol treatment services). There is interest in comprehensive evaluations of the effectiveness of inclusive trauma care systems (e.g., a baseline and follow-up study of an inclusive trauma care system measured in terms of the system's impact on morbidity, mortality, and disability from traumatic injury).

In *disability prevention,* there is special programmatic interest in community-based research to prevent the occurrence of or reduce the severity of adverse outcomes (e.g., secondary conditions) among persons with traumatic brain and spinal cord injury (TBI/SCI). This research could include identifying risk factors associated with adverse outcomes in the post-rehabilitation phase (i.e., community setting); describing the natural history of the occurrence of adverse outcomes and secondary conditions (e.g., identifying factors associated with disability in persons with TBI/SCI; or evaluating interventions in the community setting addressing adverse outcomes/secondary conditions). Adverse outcomes may include pressure sores; contracture; cognitive, behavioral, or psychological disorders; and other definable conditions associated with TBI/SCI. This research should cover methods to prevent or minimize the impact of adverse outcomes or secondary conditions, taking into account the injured person's need for education to prevent secondary conditions. The role of the family and community in preventing secondary conditions should be considered. Population-based and longitudinal studies are needed to better establish the occurrence of adverse outcomes and the rehabilitation needs of patients with TBI/SCI.

For primary prevention of unintentional injuries, there is special programmatic interest in the areas of home and leisure, and motor vehicle injuries. Specifically, there is programmatic interest in the development and evaluation of unintentional injury prevention strategies that can be applied in an outpatient clinical and/or managed care setting (e.g., HMOs, clinics, clinicians—offices, academic health centers, etc.). Programs that prevent injuries through education, behavior change and clinical counseling programs, safety device distribution programs, economic incentive systems, policy change and clinical preventive services are sought. Special emphasis will be placed on how these approaches apply to children, community-dwelling elderly persons, teen drivers, older drivers, as well as drivers and their use of alcohol.

There is also programmatic interest in research that evaluates the effectiveness of interventions in preventing injuries or reducing their impact (prevention effectiveness research). This includes the evaluation of innovative methods to reduce motor vehicle injuries among teenagers, (e.g., graduated licensing systems or components of such systems) or research that evaluates the effectiveness of modifying the home environment of older persons (65 or more years of age) on reducing the incidence of falls and fall-related injuries. A more complete discussion of methodologies for conducting prevention effectiveness research is presented in ''A Framework for Assessing the Effectiveness of Disease and Injury Prevention,'' (CDC, ''Morbidity and Mortality Weekly Report,'' March 27, 1992, Volume 41, Number RR–3, pp. 5–11) and in ''Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences'' (CDC, ''Morbidity and Mortality Weekly Report,'' August 18, 1995, Vol 44, No. RR10). To receive information on these reports see the section Where to Obtain Additional Information.''

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading, ''Program Requirements'' (A–F). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review following the preliminary review will be a peer review conducted by the IRGRC on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification

of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, statistical analysis plans; and plans for inclusion of minorities and both sexes.

6. The extent to which the research findings will lead to feasible, cost-effective injury interventions.

7. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

8. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

9. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

10. The reasonableness of the proposed budget to the proposed research and demonstration program.

11. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the priorities and objectives stated in ''Injury Control in the 1990s: A National Plan for Action''; ''Healthy People 2000''; ''Injury In America''; ''Injury Prevention: Meeting the Challenge''; and ''Cost of Injury.''

3. National needs.

4. Program balance among: the three phases of injury control: prevention, acute care, and rehabilitation; the major disciplines of injury control: biomechanics and epidemiology; populations addressed (e.g., adolescents, children, racial and ethnic minorities, rural residents, farm families, and people with low incomes).

5. Budgetary considerations.

C. Continued Funding: Continuation awards made after FY 1996, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office of Protection from Research Risks at the National Institutes of Health.

Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, ''Applications''). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., February 11 for March 11 submission). The letter should identify the announcement number, name the principal investigator, and specify the injury phase or discipline addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB No. 0925–0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet contained in the Grant Application Kit. Please submit an original and five copies on or before March 11, 1996, to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and are received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications that do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 610. You will receive a complete program description, information on application procedures, and application forms. The announcement is also available through the CDC homepage on the Internet. The address for the CDC homepage is [http://www.cdc.gov]. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (770) 488–4824.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Information is included on a separate sheet with the application kit for obtaining copies of: ''Injury Control in the 1990s: A National Plan for Action,'' (Atlanta: Centers for Disease Control and Prevention, 1993); ''Injury In America'' (National Academy Press, 2101 Constitution Avenue, NW, Washington, DC 20418—ISBN0–309–03545–7); ''Injury Prevention: Meeting the Challenge'' (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989)); ''Cost of Injury'' (Dorothy P. Rice, Ellen J. MacKenzie, and Associates), ''Cost of Injury: A Report to the Congress'' (San Francisco, California: Institute for Health and Aging, University of California and Injury Prevention Research Center, The Johns Hopkins University, 1989); ''A Framework for Assessing the Effectiveness of Disease and Injury Prevention,'' (CDC, ''Morbidity and Mortality Weekly Report,'' March 27, 1992, Volume 41, Number RR–3, pages 5–11) and ''Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences'' (CDC, ''Morbidity and Mortality Weekly Report,'' August 18, 1995, Volume 44, Number RR10).

Dated: January 11, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–565 Filed 1–18–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 611]

Grants for Violence-Related Injury Prevention Research Notice of Availability of Funds for Fiscal Year 1996

Introduction

The Centers for Disease Control and Prevention (CDC) announces applications are being accepted for Violence-Related Injury Prevention Research Grants for fiscal year (FY) 1996. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior (To order a copy of ''Healthy People 2000,'' see the Section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under Sections 301, 391, 393, and 394 of the Public Health Service Act (42 U.S.C. 241, 280b, 280b-1a and 280-b-3). Program regulations are set forth in Title 42 CFR, Part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments, State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, child care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $1.2 million is expected to be available for injury research grants in the areas of suicidal behavior, assaultive behavior among youth, and family and intimate violence. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, ''Programmatic Priorities.'' It is expected that the awards will begin on or about September 1, 1996, and will be made for a 12-month budget period within the appropriate (see below) project period. Funding estimates may vary and are subject to change.

For research projects targeted at areas of suicidal behavior and assaultive behavior among youth, approximately $500,000 is available to fund 2–3 grants. Each grant will be supported for a maximum project period of three years at $250,000 per year (including both direct and indirect costs).

For research projects targeted on family and intimate violence, approximately $500,000 is available to fund 2–3 grants. Each grant will be supported for a maximum project period of three years at $250,000 per year (including both direct and indirect costs). In addition, $200,000 (including both direct and indirect costs) is available for one research project for population-based research to define the occurrence of injury and disability among women as a result of violence by their intimate partner. Awards will be made for a 12-month budget period within a project period not to exceed three years.

Grant applications that exceed the $250,000 or $200,000 per year caps will be returned to the investigator as non-responsive. Special consideration may be given to grant applicants who request smaller amounts of funding for project periods of one or two years duration. Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Note: Grant funds will not be made available to support the provision of direct care services.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Purpose

The purposes of this program are to:

A. Build the scientific base for the prevention of injuries and deaths due to violence in the following three priority areas: suicidal behavior, assaultive behavior among youth, and intimate partner violence as delineated in ''Injury Control in the 1990s: A National Plan for Action,'' (Atlanta: Centers for Disease Control and Prevention, 1993) and ''Healthy People 2000.''

B. Identify effective strategies to prevent violence-related injuries.

C. Expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of violence-related injuries.

D. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminal justice, and behavioral and social sciences, to undertake research to prevent and control injuries from assaultive youth behavior, family and intimate violence, and suicidal behavior.

E. Encourage the training of pre-doctoral minority investigators to work in the area of violence research.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. The ability to carry out injury control research projects.

E. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, Programmatic Priorities.

Programmatic Priorities

Grant applicants should concentrate on the need to reduce morbidity, mortality, and disabilities caused by suicidal behavior, assaultive behavior among youth, and family and intimate partner violence.

Applicants are encouraged to propose research that (1) enhances our understanding of social, economic, and environmental factors that may affect the frequency and severity of suicidal and assaultive behavior among youth; and (2) evaluates policies, programs, or interventions that may reduce suicidal and assaultive behavior among youth via the modification of social, economic, and environmental factors.

Applicants are also encouraged to propose research that (1) addresses and defines the needs of mothers and children in families where intimate partner violence occurs, and (2) utilizies population-based research that focuses on the occurrence of injury and disability among women as a result of intimate partner violence.

Examples of possible projects listed under the priority areas below are by no means exhaustive. Innovative alternative approaches are encouraged.

Injury From Suicidal and Assaultive Behavior

(1) *Enhancing our understanding of social, economic, and environmental factors that may affect suicidal behavior:*

- Study how choice of method (firearm, overdosing, etc.) in planning or attempting suicidal behavior is influenced by cultural, social, or environmental factors.
- Conduct research to determine the nature of suicide risk among gay and lesbian persons in comparison to the general population.
- Evaluate policies, programs, or interventions that may reduce suicidal behavior via the modification of social, economic, or environmental circumstances.
- Assess the effectiveness of interventions that attempt to remove access to lethal means in reducing injury and severity of injury from suicidal behavior.

(2) *Enhancing our understanding of the importance of social and economic factors that influence assaultive behavior among youth:*

- Study why many socioeconomically disadvantaged youth do not engage in assaultive behavior despite their socioeconomic status.
- Undertake research to increase our understanding of relationships between poverty and assaultive behavior among youth.
- Study how unequal access to criminal justice, health care, and educational systems is related to assaultive behavior.
- Evaluate policies, programs, or interventions that may reduce assaultive behavior among youth via the modification of social or economic circumstances.

Family and Intimate Violence Prevention

(1) *Address and define the needs of mothers and children in families where intimate violence occurs.*

- Undertake research to determine effective interventions for mothers and children in families with ongoing violence.
- Conduct studies to determine which mothers and children are most likely to be helped by interventions designed for families with ongoing violence.
- Examine variables related to mothers, children, and families that may predict intervention effectiveness.
- Conduct studies related to the impact of children witnessing violence in their families.

(2) *Define the incidence or prevalence of functional limitations and disabilities among women as a result of intimate partner violence.*

- Quantify injuries sustained (nature and severity) and subsequent short and long-term (1-year) functional limitations and disability.
- Quantify the use of acute care, mental health, rehabilitation, and social services.
- Identify risk factors for adverse outcomes.

Also of interest is research that more accurately defines the cost of violent injuries and the cost effectiveness or prevention effectiveness of interventions. Cost analysis should be included in the plans, where appropriate, to evaluate an intervention(s) that addresses one of the three priority areas of violence-related

injury research previously outlined, (i.e., suicidal behavior, assaultive behavior among youth, and family and intimate violence). A more complete discussion of methodologies for assessing cost analysis is presented in ''A Framework for Assessing the Effectiveness of Disease and Injury Prevention,'' (CDC, ''Morbidity and Mortality Weekly Report,'' March 27, 1992, Volume 41, Number RR–3, pages 5–11). (To receive information on these reports see the section Where to Obtain Additional Information.)

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A–E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review following the preliminary review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, statistical analysis plan, and plans for inclusion of minorities and both sexes.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities, including pre-doctoral minority investigator(s).

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives outlined under the section, Programmatic Priorities.

3. National needs.

4. Overall distribution among:

- The three priority areas of violence-related injury research: suicidal behavior, assaultive behavior among youth, and family and intimate violence;
- The major disciplines of violence-related injury prevention: social and behavioral science, biomechanics, and epidemiology;
- Populations addressed (e.g., adolescents, racial and ethnic minorities, the elderly, children, urban, rural).

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two years duration).

6. Additional consideration will be given to those applicants who provide evidence of an injury research training program for pre-doctoral minority investigators.

C. Continued Funding: Continuation awards made after FY 1996, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the

Office of Protection from Research Risks at the National Institutes of Health.

Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, ''Applications''). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., February 14 for March 14 submission). The letter should identify the announcement number, name the principal investigator, and specify the priority area of violence-related injury research (i.e., suicidal behavior, assaultive behavior among youth, and family and intimate violence) addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB No. 0925–0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before March 14, 1996, to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 611. You will receive a complete program description, information on application procedures, and application forms. The announcement is also available through the CDC homepage on the Internet. The address for the CDC home page is [http://www.cdc.gov]. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (404) 488–4824.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Copies of ''Injury Control in the 1990s: A National Plan for Action,'' (Atlanta: Centers for Disease Control and Prevention, 1993) and ''A Framework for Assessing the Effectiveness of Disease and Injury Prevention,'' (CDC, ''Morbidity and Mortality Weekly Report,'' March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (404) 488–4265.

Information for obtaining the suggested readings, ''Violence and the Public's Health,'' ''Understanding and Preventing Violence,'' and ''Violence in America: A Public Health Approach,'' is included on a separate sheet with the application kit.

Dated: January 11, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–566 Filed 1–18–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95N–0407]

Animal Drug Export; Denagard® (Tiamulin) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fermenta Animal Health Co. has filed an application requesting approval for the export of the animal drug Denagard® (tiamulin) injection for swine to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act

(the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64190, has filed application number 4557 requesting approval for the export of the animal drug Denagard® (tiamulin 10 percent) injection for swine to Canada. The product is intended for intramuscular use in swine for the treatment of swine dysentery associated with *Treponema hyodysenteriae*. The application was received and filed in the Center for Veterinary Medicine on December 6, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 29, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: December 20, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–469 Filed 1–18–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Design of Experimental Studies of Transmission of Creutzfeldt-Jakob Disease (CJD) by Plasma and Plasma Derivatives; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public workshop.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), is announcing a public workshop on design of experimental studies to investigate possible transmission of Creutzfeldt-Jakob Disease (CJD) by plasma and plasma derivatives. This scientific workshop, sponsored by FDA and the National Heart, Lung, and Blood Institute, is intended to foster an indepth discussion of the available laboratory methods which would underlie experimental studies on the transmission of CJD and related diseases by plasma and derived products.

DATES: The public workshop will be held on Monday, January 29, 1996, from 8 a.m. to 4:30 p.m. Preregistration is recommended due to limited seating. Registration is requested by January 22, 1996. There is no registration fee.

ADDRESSES: The public workshop will be held at the National Institutes of Health, Bldg. I, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Joseph Wilczek, Center for Biologics Research and Evaluation (HFM–350), FDA, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, or FAX 301–594–6764.

Regarding other information: Joseph C. Fratantoni, Center for Biologics Research and Evaluation (HFM–330), FDA, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–496–4396, or FAX 301–402–2780.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to provide an opportunity to discuss the elements required to initiate and execute meaningful experiments that will further our understanding of the risk of potential transmission of CJD and related disorders by blood, plasma, and derived products. The workshop will foster detailed discussion of available techniques among investigators, manufacturers, and regulators.

Topics to be presented include the following: (1) Detection systems available for use in studies of CJD; (2) animal models and the biology of CJD and related disorders; (3) experimental design for testing the infectivity of plasma derivatives; and (4) inactivation and partitioning of the infectious agent in the manufacturing process for plasma derivatives.

FDA will consider information presented and discussed at the workshop in identifying topics for future discussion.

Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

Dated: January 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–638 Filed 1–17–96; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPD–854–NC]

Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Area

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

ACTION: Notice with comment period.

SUMMARY: In accordance with the Social Security Amendments of 1994, this notice announces applications received from hospitals requesting waivers from dealing with their designated area organ procurement organizations (OPOs). Effective January 1, 1996, a hospital is required to have an agreement with the OPO designated for the area in which it is located unless granted a waiver to have an agreement with an alternative OPO. This notice requests comments from OPOs and the general public for consideration by us in determining whether such a waiver should be granted.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 19, 1996.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–854–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–854–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1138 of the Social Security Act (the Act) provides that a hospital or rural primary care hospital that participates in the Medicare or Medicaid programs must establish written protocols for the identification of potential organ donors. Section 155 of the Social Security Amendments of 1994 (SSA '94) (Public Law 103–432) amended section 1138 of the Act to require that effective January 1, 1996, a hospital may have an agreement concerning organ procurement only with its designated Organ Procurement Organization (OPO) unless it obtains a waiver from the Secretary that would allow the hospital to have an agreement with a different OPO. This section also provides that any hospital that had an agreement with an out-of-area OPO on the date of enactment, October 31, 1994, must submit a waiver request to the Secretary by January 1, 1996, if it wishes to retain the agreement. The existing agreement would remain in effect pending the Secretary's determination.

The law further states that in granting a waiver for an out-of-area agreement, the Secretary must determine that such a waiver: (1) Would be expected to increase donation; and (2) will assure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the out-of-area OPO. In making a waiver determination, the Secretary may consider, among other factors: (1) cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to definition of metropolitan statistical areas (MSA); and (4) the length and continuity of a hospital's relationship with the out-of-area OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver applications within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice.

II. Hospital Requests for Waiver

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that has been supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that may be provided by hospitals requesting a waiver. As required by law, we indicated that upon receipt of the waiver requests, we would publish a notice to solicit comments.

Upon receipt of the comments, we will review the request and comments received. During the review process, we may consult on an as needed basis with parties other than those that submitted comments including the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and HCFA regional offices. If necessary, we may also request additional clarifying information from the applying hospital. It should be noted that there is no time limit upon which we must complete our review. We then will make a determination on the waiver requests and notify the affected hospitals and OPOs.

III. Hospitals Requesting Waivers

To date, we have received waiver applications from the following hospitals:

Hospital Name: West Florida Regional Medical Center
City & State: Pensacola, FL
Requested OPO: Alabama Organ Center
City & State: Birmingham, AL
Designated OPO: University of Florida
City & State: Gainesville, FL

Hospital Name: Singing River Hospital System
City & State: Pascagoula, MS
Requested OPO: Alabama Organ Center
City & State: Birmingham, AL
Designated OPO: Mississippi Organ Recovery Agency
City & State: Jackson, MS

Hospital Name: Jefferson Memorial Hospital
City & State: Ranson, WV
Requested OPO: Virginia's Organ Procurement Agency
City & State: Midlothian, VA
Designated OPO: Center Organ Recovery & Education
City & State: Pittsburgh, PA

Hospital Name: City Hospital
City & State: Martinsburg, WV
Requested OPO: Virginia's Organ Procurement Agency
City & State: Midlothian, VA
Designated OPO: Center Organ Recovery & Education
City & State: Pittsburgh, PA

Hospital Name: Princeton Community Hospital
City & State: Princeton, WV
Requested OPO: Virginia's Organ Procurement Agency
City & State: Midlothian, VA
Designated OPO: Center Organ Recovery & Education
City & State: Pittsburgh, PA

Hospital Name: Fort Walton Beach Medical Center
City & State: Ft. Walton Beach, FL
Requested OPO: Alabama Organ Center
City & State: Birmingham, AL
Designated OPO: University of Florida
City & State: Gainesville, FL

Hospital Name: Baylor Medical Center at Grapevine
City & State: Grapevine, TX
Requested OPO: Southwest Organ Bank
City & State: Dallas, TX
Designated OPO: Life Gift Organ Donation Center
City & State: Houston, TX

Hospital Name: St. Joseph Regional Health Center
City & State: Bryan, TX
Requested OPO: Southwest Organ Bank
City & State: Dallas, TX
Designated OPO: Life Gift Organ Donation Center
City & State: Houston, TX

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–644 Filed 1–17–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–68]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT:

Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Note: Due to the government shutdown, notices did not appear in the December 29, 1995, January 5, 1996, and January 12, 1996 Federal Registers.

Dated: January 12, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–560 Filed 1–18–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR–3960–N–03]

Notice of Extension of Application Deadline and of Rescheduled Bidders Conference on Cooperative Agreement Applications for the Community Renaissance Fellows Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of extended application deadline and of rescheduled bidders conference.

SUMMARY: On November 30, 1995, HUD published a notice in the Federal Register seeking applications from public and private universities in order to provide funding to develop and implement the educational component of HUD's new Community Renaissance Fellows Program. The notice also announced that HUD would hold a ''bidders'' conference in Washington D.C. on January 11, 1996 and set a February 15, 1996 application deadline.

On January 8, 1996 the Department published a notice in the Federal Register cancelling the January 11, 1996 conference due to the partial shutdown of the Federal government. The purpose of this notice is to reschedule the conference for January 24, 1996. In addition, the application deadline is extended until February 29, 1996. No other changes are made to the November 30, 1995 notice by this notice.

DATES: Extended application deadline. The application deadline set forth in the November 30, 1995 Federal Register notice (60 FR 61634) is extended as follows. Applications must be physically received at the address shown in the **ADDRESSES** section of this notice by 4:30 p.m. Eastern Standard Time on February 29, 1996. *Applications faxed to this address will not be accepted.* The above-stated deadline date is *firm* as to *date, hour* and *place.* In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Rescheduled bidder conference date. HUD will be holding a ''bidders'' conference to explain, in more detail, the background behind this solicitation and clarify application requirements. The conference will be held on January 24, 1996 from 2:00 to 4:00 p.m. in Washington, D.C. All interested applicants are encouraged to attend this conference. For more information about this conference, please call Jane Karadbil at (202) 708–1537 (this is not a toll free number), or for the hearing impaired, TDD 1–800–877–TDDY.

ADDRESSES: To submit applications. Applications must be physically received by the Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 pm. Eastern Standard Time on February 29, 1996. *Applications faxed to this address will not be accepted.*

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 8110, Washington, DC 20410. Telephone number (202) 708–1537 voice (this is not a toll free number); 1–800–877–TDDY (TDD). Ms. Karadbil can also be contacted via the Internet at Jane__R.__Karadbil@hud.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1995 (60 FR 61634), HUD published a notice in the Federal Register seeking applications from public and private universities in order to provide funding to develop and implement the educational component of HUD's new Community Renaissance Fellows Program. The program will place 20 Fellows in distressed public housing developments undergoing conversion, for example, to mixed-income or mixed-use projects. HUD hopes, with the assistance of private foundations, to place additional Fellows in comparable projects being undertaken by community development corporations.

The November 30, 1995 notice also announced that HUD would hold a ''bidders'' conference on January 11, 1996. The purpose of this conference was to explain, in more detail, the background behind this solicitation and clarify application requirements. Because of the partial shutdown of the Federal government, the Department cancelled the ''bidders'' conference scheduled for January 11, 1996 in Washington, D.C. by notice (61 FR 559), but indicated that the conference may be rescheduled. This notice reschedules that conference and provides a two-

week extension for submitting applications.

No Other Changes to the November 30, 1995 Notice

No other changes are made to the November 30, 1995 notice by this supplementary notice.

Dated: January 11, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 96–559 Filed 1–18–96; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication, AA–76941; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 19(b) of the Alaska Land Status Technical Corrections Act of October 14, 1992, 106 Stat. 2112, 2126, and Sec. 14(h)(5) of the Alaska Native Claims Settlement Act of December 18, 1971, as amended, 43 U.S.C. 1601, 1613(h)(5), will be issued to Ethel Lorene Ellis, Personal Representative of the estate of Jack John Justin, deceased, for approximately 160 acres. The lands involved are located in T. 7 N., R. 14 E., Copper River Meridian, in the vicinity of Nabesna, Alaska.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until February 20, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Christy Favorite,

Land Law Examiner, ANCSA Adjudication Team, Branch of Gulf Rim Adjudication.

[FR Doc. 96–477 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–JA–P

[CO–933–96–1320–01; COC 54608]

Notice of Coal Lease Re-Offering by Sealed Bid; COC 54608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be re-offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). On August 18, 1995, these resources were re-offered for competitive lease by sealed bid to the highest qualified bidder provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Cyprus Western Coal Company was the only bidder. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected, the tract re-offered and a third sale scheduled for November 16, 1995. The sale was not held due to the furlough of Federal government employees but was rescheduled for December 22. The sale was not held due to the second furlough of Federal government employees. The coal sale is re-scheduled for January 25, 1996.

DATES: The lease sale will be held at 11 a.m., Thursday, January 25, 1996. Sealed bids must be submitted no later than 10 a.m., Thursday, January 25, 1996.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam on the Twenty Mile Tract in the following lands;

Sixth Principal Meridian

T. 5 N., R. 86 W.,
Sec. 21, N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, N½, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼.

The land described contains 2,600 acres, more or less.

The recoverable reserves have been adjusted down to 23.87 million tons to account for coal purchased by Cyprus Western Coal Company for two mineral R/W's. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received basis is as follows:

Btu	11.745 Btu/lb.
Moisture	7.76%
Sulfur Content	0.48%
Ash Content	8.80%

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: January 8, 1996.

Karen A. Purvis,

Solid Minerals Team, Resources Services.

[FR Doc. 96–471 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–SB–M

[WY–010–1050–00]

Notice of Availability (NOA) of the Environmental Assessment (EA) Titled, ''Management for the Big Cedar Ridge Fossil Plant Area,'' for Public Review and Comment

SUMMARY: The EA for the management of the Big Cedar Ridge Fossil Plant Area documents the planning review and analysis of five alternatives for managing the area, including the Bureau of Land Management's preferred alternative. The planning review area is comprised of about 1,550 acres of BLM-administered public land in Washakie County, Wyoming, and in the Bighorn Basin Resource Area of the BLM's Worland District. Fossil concentration areas, including the discovery site, are found on about 260 acres within the review area.

The planning review is being conducted to evaluate the management needs and issues associated with the discovery of a complete and preserved in-place Cretaceous fossil plant community. The area was discovered in 1990 by Dr. Scott Wing of the Smithsonian Institution. The objective of this planning review is to establish appropriate management of the fossil resources including adequate protection and opportunities for scientific research and public education. This discovery created significant interest within the academic community. Worldwide discoveries of such well preserved fossil plants of this age are rare, and the fossils are considered to be of great scientific importance.

The discovery was made approximately 3 years after the approval of the Washakie Resource Management Plan (RMP). A review of the RMP is needed to evaluate the adequacy of the existing decisions for the protection of paleontological resources in the review area. Management actions include continuing existing management that is generally consistent with the Washakie RMP but with management emphasis on enhancing opportunities for scientific research, public education, recreation, hobby collection of fossils, and closing the 260-acres of known fossil concentration areas to mineral location and pursuing a mineral location withdrawal. Based on preliminary analysis, BLM has established a temporary closure to the staking of mining claims in the planning review area. As part of the planning review, BLM has collected information and conducted analyses described in the environmental assessment to determine whether a long-term closure is necessary for protection of the paleontological resources. Based on the results, the Washakie RMP will be amended, if necessary.

DATES: Comments on the adequacy of the EA and on the finding of no significant impact (FONSI) must be received no later than February 20, 1996. Comments should be directed to Dave Baker, Outdoor Recreation Planner, Bighorn Basin Resource Area, or Bob Ross, Worland District Planner, at the address below.

During the same 30-day period, any protests on the proposed decision (the preferred alternative) and proposed amendment of the Washakie RMP may also be submitted (as provided in 43 Code of Federal Regulations, Part 1610.5–2). All parts of the proposed decision may be protested. Protests should be sent to the Director, Bureau of Land Management, Department of the Interior, 1849 C Street NW, MS–302 LS, Washington, D.C. 20240. They should include:

—The name, mailing address, telephone number, and interest of the person filing the protest.

—A statement of the issue or issues being protested.

—A statement of the part or parts of the proposed decision being protested.

—Copy of all documents addressing the issue or issues that were submitted during the planning review process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

—A concise statement explaining why the proposed decision is believed to be wrong.

FOR FURTHER INFORMATION CONTACT: Dave Baker, Outdoor Recreation Planner, Bighorn Basin Resource Area, or Bob Ross, Worland District Planner at P. O. Box 119, Worland, Wyoming 82401–0119, phone 307–347–9871.

SUPPLEMENTARY INFORMATION: Following the discovery of the Big Cedar Ridge Fossil Plant Area, the BLM completed a temporary management plan for the lands in and around the fossil discovery area. Protective measures have been initiated and have been in effect pending completion of this planning review. This review includes opportunities for public participation.

The steps followed for this planning review are:

1. An interdisciplinary planning team describes and analyzes the existing management in the planning review area and describes the affected environment.

2. A notice of intent to conduct the planning review is published in the Federal Register informing the public of known and anticipated issues and of opportunities for public participation and comment.

3. Public contacts and meetings are held for scoping and development of the preliminary issues and alternatives.

4. With the help of the public, management alternatives for the area are formulated and analyzed and the BLM's preferred alternative is identified.

5. The alternatives, including the BLM's preferred alternative, and their environmental consequences are described in the EA and the EA is issued for public review and comment. We are now at this step of the process. A 30-day period will be provided for reviewing and commenting on the EA and the FONSI and for submitting protests on any proposed decisions to be added to or changed in the Washakie RMP.

6. The EA will then be revised, if necessary, and a decision record will be issued. If necessary, the decision record will identify and include any needed amendment to the Washakie RMP.

Based on the public's input and analysis by the BLM interdisciplinary team, the following issues were identified:

1. Whether or not there is a need to protect the important paleontological resources in the review area from being damaged by surface-disturbing activities, and whether withdrawing the area from filing of mining claims and mining activity would be necessary.

2. Whether or not the area should be designated an area of critical environmental concern (ACEC).

3. Whether or not the area should be managed primarily for scientific research, public education, and recreation.

The five alternatives analyzed in the EA are:

1. No action (continuation of existing management).

2. Continue existing management and pursue a 260-acre mineral location withdrawal on the known fossil concentration areas.

3. Designate a 1,550-acre ACEC.

4. Designate a 1,550-acre ACEC and pursue a 260-acre mineral location withdrawal on the known fossil concentration areas.

5. Designate an ACEC, pursue a mineral location withdrawal on the 260-acre known fossil concentration areas, and dedicate the area to research and public education.

The various impacts that would be expected from implementing each of the alternatives are also presented in the EA. The BLM's preferred alternative is alternative 2. Continuing existing management on the planning review area and pursuing a mineral withdrawal under the 1872 Mining Law for the 260-acre known fossil concentration areas represents what the BLM believes to be the best balance between the public land and resource uses and environmental protection in the planning review area. Based on the analysis of potential environmental impacts contained in the EA, it has been determined that anticipated impacts of the preferred alternative are not significant and an environmental impact statement is not needed.

At the end of the comment/protest period, the decisions based on the planning review will be issued in the Decision Record for the EA. Any necessary amendment to the Washakie RMP will be included in the Decision Record. The 30-day review/comment/protest period will begin the day following the date of publication of the NOA of this EA in the Federal Register. Comments on the alternatives, the adequacy of the environmental analyses, the FONSI, and any protests on the proposed decision will be fully considered and evaluated in development of the decision record. Any protests submitted will also be resolved before BLM issues the decision record for the EA, and the Washakie Resource Management Plan will be amended, if necessary.

Dated: January 10, 1996.

Alan R. Pierson,

State Director.

[FR Doc. 96–482 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–84–P

[MT–027–1320–00, MTM 83859]

Notice of Intent to Plan; Montana

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of intent to conduct scoping and prepare an environmental analysis on the proposed lease tracts.

SUMMARY: On November 9, 1995, Spring Creek Coal Company filed an amended lease application, MTM 83859, for federal coal resources within the Powder River Coal Region. The land included in the application is located in Big Horn County, Montana and is described as follows:

T. 8 S., R. 39 E., P.M.M.
Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26: S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½N½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼;
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼.

The 320.00 acre tract contains an estimated 37.8 million tons of recoverable coal reserves.

An environmental analysis will be prepared to analyze the proposed lease of the federal coal resource and the reasonably foreseeable consequences of this action as well as the impacts of development of the coal.

This document will amend the Powder River Resource Area Resource Management Plan. It will be based on the existing statutory requirements and will meet the requirements of the Federal Land Policy Management Act of 1976.

SUPPLEMENTARY INFORMATION: All interested parties including federal, state and local agencies are invited to participate in the environmental analysis scoping process. The scoping period will begin immediately and will end March 15, 1996.

The following issues and concerns have been identified:

—Possible impacts to the hydrologic resources;
—Potential for social and economic impacts to the area;
—Potential redesignation of crucial winter range for deer and antelope from unsuitable for mining to suitable for mining with stipulations;
—Cultural resources and traditional lifeway values;
—The level of environmental documentation necessary (EA or EIS).

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in the preparation of the environmental analysis.

The scoping process used to collect issues and concerns will involve one public meeting and a written comment period. The written comment period will begin immediately and will close on March 15, 1996. The public meeting will be held February 29, 1996, at 7 p.m. at the Sheridan County Fulmer Public Library, 335 West Alger Street, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: All comments and requests for further information should be addressed to Todd Christensen, Area Manager, Bureau of Land Management, Powder River Resource Area, 111 Garryowen Road, Miles City, Montana 59301, telephone number (406) 232–4331.

Glenn A. Carpenter,

District Manager.

[FR Doc. 95–609 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–DN–M

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the third meeting of the Arizona Resource Advisory Council. The meeting will be held February 22–23, 1996, beginning at 8:30 a.m. in the New Mexico Room at the Bureau of Land Management's National Training Center, 9828 N. 31st Avenue, Phoenix, Arizona 85051. The agenda items to be covered at this meeting include review of previous meeting minutes, standards and guidelines work group report, update on Arizona Preservation Initiative, discussion of recreation travel, tourism, and public relations working group, presentation of Lower Gila Resource Management Plan Amendment, Phoenix District, and public comment period which will take place at 3:30 p.m. February 22, 1996, and 11:30 a.m., February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Clinton Oke, Bureau of Land Management, Arizona State Office, 3707 N. 7th St., Phoenix, Arizona 85014, (602) 650–0512.

Denise P. Meridith,

State Director.

[FR Doc. 96–626 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–32–P

[WY–030–06–1060–00]

Helicopters and Motorized Vehicles Use for Gathering Wild Horses and Burros; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: A public hearing on the use of helicopters in wild horse management activities will be held at the Jeffrey Center in Rawlins, Wyoming.

DATES: February 21, 1996.

ADDRESSES: Jeffrey Center, Third and Spruce, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Kurt Kotter, District Manager and Hearing Officer, Bureau of Land Management, Rawlins District Office, 1300 Third Street, Rawlins, Wyoming 82301.

SUPPLEMENTARY INFORMATION: The agenda will be limited to:

- Introduction and Opening Remarks
- Review of the Wild Horse Management Plan.
- Use of Helicopters in the Plan.
- Film presentation of roundup activity.
- Public comment period.

The hearing will begin at 7 p.m. and is open to the public. Interested persons may make oral statements on the subject. All statements will be recorded.

Kurt J. Kotter,

District Manager.

[FR Doc. 96–495 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–22–M

Correction of Meeting Notice: Change in Time

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Correction of meeting notice: Change in time.

SUMMARY: The Lower Snake River District Resource Advisory Council will discuss and develop draft statewide standards for rangeland health and guidelines for managing livestock grazing on public lands.

DATES: January 25, 1996.

The meeting will begin at 6:30 p.m. rather than at 8 a.m. as previously published. A public comment period will be held at 7:30 p.m.

ADDRESSES: The meetings will be held at the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Jerry L. Kidd,

District Manager.

[FR Doc. 96–583 Filed 1–18–96; 8:45 am]

BILLING CODE 1020–GG–P

[NM–931–06–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, The Department of the Interior, Bureau of Land Management, announces the meeting of the New Mexico Resource Advisory Council (RAC). The two day agenda includes a half day field trip to examine a potash mine and oil and gas resources, standards for rangeland health and guidelines for grazing management discussions, a time for the public to address the RAC and for the next RAC meeting development of a draft agenda, selection of a location and a date to meet. The meeting is open to the public. During the time for the public to address the RAC depending on the number of persons wishing to talk and the time available, the time for individual comments may be limited. The public may present written comments to the Council.

The RAC meeting will start with a tour of a potash mine and oil and gas resources from 8:30 a.m. to 1 p.m. on February 8, 1996. After lunch at approximately 2 p.m. the RAC meeting will continue at the Motel Stevens, 1829 South Canal, Carlsbad, New Mexico, Telephone 505–887–2851. The RAC will discuss standards for rangeland health and guidelines for grazing management for the remainder of the day. Starting at 8:30 a.m. on February 9, 1996 RAC meeting will continue with standards and guidelines discussion. There will be a time period starting at 9:30 a.m. for the public to address the RAC. At the completion of the public presentations the RAC will continue discussion on standards and guidelines.

DATES: The RAC will meet on Thursday, February 8, 1996 from 8:30 a.m. to 5 p.m. and on Friday, February 9, 1996 from 8:30 a.m. to 4 p.m. The public may address the Council during the public comment period on February 9, 1996 starting at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Policy and Planning Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State and regional standard for rangeland health and guidelines for grazing management.

Dated: January 12, 1996

William C. Calkins,

State Director.

[FR Doc. 96–569 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–FB–M

[CO–010–06–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the next meeting of the northwest Colorado Resource Advisory Council will be held on Tuesday, February 6, 1996 in Grand Junction, Colorado.

DATES: The meeting is scheduled for Tuesday, February 6, 1996.

ADDRESSES: For further information, contact Lynda Boody, Bureau of Land management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000; TDD (970) 244–3011.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin Tuesday at 8:30 a.m. in the Conference room at the Bureau of Land Management office, 2815 H Road Grand Junction, CO 81506. The agenda for this meeting will focus on general Council business, standards and guidelines for grazing, and selection of a Council member to fill a vacated position.

All Resource Advisory Council meetings are open to the public. interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Grand Junction/Craig District Manager.

Summary minutes for the Council meeting will be maintained in the Grand Junction and Craig District Offices and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 10, 1996.

Mark T. Morse,

Grand Junction/Craig District Manager.

[FR Doc. 96–588 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–70–M

[OR–030–06–1220–00: GP6–0050]

Notice of Meeting of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held January 31, 1996 from 8 a.m. to 4:30 p.m. The Southwestern Oregon Resource Advisory Council will meet jointly with the John/Day Snake Resource Advisory Council from 8 a.m. to 4:30 p.m. on February 1, 1996, and on February 2, 1996, from 8 a.m. to 3 p.m. at the Interior Columbia Basin Ecosystem Management Project Office, 112 East Poplar Street, Walla Walla, Washington 99362. At an appropriate time each day, the Council meeting will recess for approximately one hour for lunch. Public comments will be received by the Southeastern Oregon Resource Advisory Council from 4 p.m. to 4:30 p.m. on Wednesday, January 31, 1996. Topics to be discussed are the Interior Columbia Basin Ecosystem Management Project, administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and standards and guidelines for livestock grazing on public lands.

DATES: The meeting will begin at 8 a.m. to 4:30 p.m. January 31, and February 1, 1996 and 8 a.m. to 3 p.m. February 2, 1996.

ADDRESSES: The meeting will take place in the Interior Columbia Basin Ecosystem Management Project Office, 112 East Poplar Street, Walla Walla, Washington 99362.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541 473–3144).

James E. May,

District Manager.

[FR Doc. 96–589 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–33–M

[WY–985–06–0777–72]

Resource Advisory Council Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Wyoming Resource Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda for a meeting of the Wyoming Resource Advisory Council (RAC) which was postponed from January 1996 due to federal furloughs.

DATES: March 19, 1996, from 8:30 a.m. until 5 p.m. and March 20, 1996, from 8:30 a.m. until 3 p.m.

ADDRESS: Parkway Plaza Hotel, 123 West ''E'' Street, Casper, WY 82602.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, RAC Coordinator, Wyoming Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6020.

SUPPLEMENTARY INFORMATION: This agenda for the meeting will include:

1. Status of Green River Basin Advisory Committee
2. Presentation on Proper Functioning Riparian Area
3. Preliminary Reports from RAC Subgroups
4. Standards and Guidelines
5. Public Comment

This meeting is open to the public. Interested persons may make oral statements to the Council or file written statements for the council's consideration. Anyone wishing to make an oral statement should notify the RAC Coordinator, at the above address by March 8, 1996.

Depending on the number of persons wishing to make oral statements, a time limit, per person, may be established by the Chair of the Resource Advisory Council.

Alan R. Pierson,

State Director.

[FR Doc. 96–570 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–22–M

[UT–045–96–1230–00]

Dixie Resource Area Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

ADDRESSES: Copies of the Dixie Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) may be obtained from the following Bureau of Land Management (BLM) locations: BLM, Utah State Office, 324 South State, Information Access Center (4th floor), Salt Lake City, Utah, telephone (801) 539–4110; Cedar City District Office, 176 East DL Sargent Drive, Cedar City, Utah 84720, telephone (801) 865–3053; Dixie Resource Area Office, 345 East Riverside Drive, St. George, Utah 84790, telephone (801) 637–4654.

Comments should be sent to the Dixie Resource Area Office at the above address by Wednesday, May 1, 1996.

SUMMARY: The Notice of Availability of the Dixie Resource Area Draft Resource Management Plan and Environmental Impact Statement was published in the Federal Register on October 31, 1995 (60 FR 55380), and under EPA's Notice of Availability (NOA) in the Federal Register on November 9, 1995 (60 FR 56590). The NOA initiated a 90-day comment period. In response to requests by governmental units and individuals, the comment period has been extended an additional 90-days to May 1, 1996.

DATES: Comments must be submitted by close of business, May 1, 1996. Comments received or postmarked after that date may not be considered in the Proposed Dixie Resource Management Plan and Final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: David F. Everett, Team Leader, or Jim Crisp, Area Manager, Bureau of Land Management, Dixie Resource Area Office, 345 East Riverside Drive, St. George, Utah 84790, telephone (801) 673–4654.

Dated: January 9, 1996.

G. William Lamb,

State Director.

[FR Doc. 96–619 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–060–1220–00]

Palm Springs-South Coast Resource Area; Adjustment of Daily Recreation Usage Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of increase in fees at Corn Springs Campground.

SUMMARY: Daily recreation use fees at Corn Springs Campground are increased from $4.00 per campsite to $6.00 per campsite. This action is necessary to recover increasing costs associated with campground maintenance.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mark A. Conley, Outdoor Recreation Planner, Palm Springs-South Coast Resource Area, Post Office Box 2000, North Palm Springs, CA 92258–2000, (619) 251–4800.

SUPPLEMENTARY INFORMATION: The Corn Springs campground was developed and daily recreation use fees established during the mid-1960s. The current use fee of $4.00 has been charged for more than a decade; information pertaining to use fees for these sites prior to the 1980s is unavailable.

An increase in daily recreation use fees reflects steadily increasing costs associated with maintenance of campground facilities. This action does not result in fees which exceed those established for similar facilities by other Federal agencies, non-Federal public agencies and the private sector located within the service area of Corn Springs campground.

Authority for establishing daily recreation use fees is found at 36 CFR part 71 as promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), and section 3, Act of July 11, 1972, 86 Stat. 461.

Dated: January 11, 1996.

Joan Oxendine,

Acting Area Manager.

[FR Doc. 96–608 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–40–P

[NM–040–1610–00]

Notice of Extension of Public Comment Period for the Draft Texas Resource Management Plan/ Environmental Impact Statement (TX RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, announces that the public comment period for the Draft Texas RMP/EIS will be extended from January 6, 1996 to January 30, 1996 due to the effects of the recent Federal government shutdown. This document analyzes land use planning options for BLM managed Federal lands and minerals throughout the state of Texas.

DATES: Comments on the Draft RMP/EIS will be accepted if they are submitted or post-marked no later than January 30, 1996.

ADDRESSES: Comments can be sent to: Paul Tanner, Assistant District Manager, Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the Draft RMP/EIS contact the Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160 Telephone: (405) 794–9624.

SUPPLEMENTARY INFORMATION: The Draft Texas Resource Management Plan (RMP) and Environmental Impact Statement (EIS) identifies and analyzes the future options for managing the Federal mineral estate situated within Texas administered by the Bureau of Land Management (BLM), Tulsa District.

The Texas RMP is being prepared using the BLM planning regulations issued under the authority of the Federal Land Policy and Management Act of 1976. When completed, the RMP will provide a comprehensive framework for managing the Federal minerals within Texas over the next 20 years. The contents of this Draft RMP/EIS focus on resolving on resource management issue, the leasing and development of Federal oil and gas resources in Texas. Three RMP alternatives have been developed to describe the different management options available to the BLM for administering Federal oil and gas in Texas. These alternatives were specifically developed to respond to that issue. Each alternative presents a different level of oil and gas leasing stipulation application.

Alternative A. No Action

This alternative represents a continuation of present resource allocation levels and management practices. This alternative provides a baseline for comparison of other alternatives, and may not adequately resolve the issues identified in the RMP/EIS.

Alternative B. Intensive Surface Protection (Agency Preferred Alternative)

This represents an alternative which would place primary emphasis on protecting important environmental values through the use of additional leasing stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are considered in the leasing process in a manner that provides additional protection for valuable surface resources.

Alternative C. No Leasing

This represents an alternative which would remove Federal oil and gas from availability for leasing and development. It would change management direction so that the issue is resolved in a manner that places highest priority on the preservation of the oil and gas resource and protection of the associated surface resources.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the Draft RMP/EIS contact the Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160 Telephone: (405) 794–9624.

Dated: January 8, 1996.

Jim Sims,

District Manager.

[FR Doc. 96–496 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–942–06–1420–00]

Arizona State Office; Notice of Filing of Plats of Survey

January 11, 1996.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat, in 4 sheets, representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of Mineral Surveys 3842, portions of the subdivision of certain sections, and a portion of the metes-and-bounds surveys, and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 19 North, Range 19 West, Gila and Salt River Meridian, Arizona, was approved October 5, 1995, and officially filed October 12, 1995.

A plat, in 4 sheets, representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 20 North, Range 19 West, Gila and Salt River Meridian, Arizona, was approved October 4, 1995, and officially filed October 12, 1995.

A plat, in 4 sheets, representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary), a portion of the west boundary, and a portion of the subdivisional lines, and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 21 North, Range 19 West, Gila and Salt River Meridian, Arizona, was approved October 2, 1995, and officially filed October 12, 1995.

A plat, in 5 sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and certain mineral surveys, and the subdivision of certain

sections and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 19 North, Range 20 West, Gila and Salt River Meridian, Arizona, was approved October 4, 1995, and officially filed October 12, 1995.

A plat, in 9 sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and certain mineral surveys, and the subdivision of section 3, and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 20 North, Range 20 West, Gila and Salt River Meridian, Arizona, was approved October 3, 1995, and officially filed October 12, 1995.

A plat, in 4 sheets, representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary), a portion of the subdivisional lines, and Mineral Survey No. 4213, and a metes-and-bounds survey of the Mount Nutt Wilderness Area Boundary in Township 21 North, Range 20 West, Gila and Salt River Meridian, Arizona, was approved October 2, 1995, and officially filed October 12, 1995.

A plat, in eleven sheets, constitutes the map of the Mount Nutt Wilderness Boundary, as required by Public Law 101–628—Nov. 28, 1990, Section 1—Titles I through III of this Act may be cited as the ''Arizona Desert Wilderness Act of 1990'' Title I, Section 101.(c), and the survey in Townships 19, 20, and 21 North, Ranges 19 and 20 West, Gila and Salt River Meridian, Arizona, was approved October 6, 1995, and officially filed October 18, 1995, is in compliance with the provisions as set forth in said act.

A supplemental plat, in 2 sheets, showing amended lottings created by the cancellation of Mineral Survey 3997 and Buckeye No. 3 through Buckeye No. 10 lodes of Mineral Survey 3965, in sections 22 and 27, Township 1 North, Range 14 East, Gila and Salt River Meridian, Arizona, was approved November 6, 1995, and officially filed November 16, 1995.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat representing the dependent resurvey of Mineral Survey No. 2108B and Mineral Survey No. 4097, and the metes-and-bounds survey of Tracts 37 and 38, in Township 10 South, Range 16 East, Gila and Salt River Meridian, Arizona, was approved October 12, 1995, and officially filed October 19, 1995.

A plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of Mineral Survey No. 747, and the subdivision and metes-and-bounds survey in section 16, Township 10 South, Range 16 East, Gila and Salt River Meridian, Arizona, was approved October 12, 1995, and officially filed October 19, 1995.

These plats were prepared at the request of the Coronado National Forest Service.

A plat representing the dependent resurvey of the Seventh Auxiliary Guide Meridian East through Township 20 North, the south and west boundaries, and a portion of the subdivisional lines in Township 20 North, Range 28 East, Gila and Salt River Meridian, Arizona, was approved November 8, 1995, and officially filed November 16, 1995.

A plat, in 6 sheets, representing the dependent resurvey of the Fifth Standard Parallel North (south boundary), the west and north boundaries, and subdivisional lines and the subdivision of sections 13, 14, 24, 30 and 36, the survey of certain lots, the survey of Tracts 37 and 38, and a metes-and-bounds survey in section 30, Township 21 North, Range 28 East, Gila and Salt River Meridian, Arizona, was approved November 7, 1995, and officially filed November 16, 1995.

A plat, in 2 sheets, representing the dependent resurvey of the Seventh Auxiliary Guide Meridian East (east boundary), the west boundary, and a portion of the subdivisional lines, and the subdivision of section 36, in Township 19 North, Range 28 East, Gila and Salt River Meridian, Arizona, was approved December 11, 1995, and officially filed December 21, 1995.

These plats were prepared at the request of the Navajo-Hopi Indian Relocation Committee.

A plat representing the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines and the subdivision of section 30, and a metes-and-bounds survey in section 30, Township 20 North, Range 21 West, Gila and Salt River Meridian, Arizona, was approved November 8, 1995, and officially filed November 16, 1995.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A plat representing the corrective dependent resurvey of a portion of the subdivisional lines in Township 20 North, Range 15 West, Gila and Salt River Meridian, Arizona, was approved November 21, 1995, and officially filed November 30, 1995.

This plat was prepared at the request of the Bureau of Land Management, Kingman Resource Area.

A plat representing the dependent resurvey of the north boundary and portions of the east and west boundaries of the San Juan De Las Boquillas Y Nogales Land Grant in Township 18 and 19 South, Range 21 East, Gila and Salt River Meridian, Arizona, was approved November 22, 1995, and officially filed November 30, 1995.

A plat, in 3 sheets, representing the dependent resurvey of portions of the south and west boundaries and subdivisional lines, and the subdivision of certain sections, and certain metes-and-bounds surveys in Township 18 South, Range 21 East, Gila and Salt River Meridian, Arizona, was approved November 22, 1995, and officially filed November 30, 1995.

A supplemental plat, in 1 sheet, showing amended lottings created by a determination of abandonment of mineral claims Grand View, West Side and West Side Turquoise in section 20, Township 19 South, Range 25 East, Gila and Salt River Meridian, Arizona, was approved December 13, 1995, and officially filed December 21, 1995.

These plats were prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Dennis K. McKay,

Acting Chief Cadastral Surveyor of Arizona.

[FR Doc. 96–612 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–32–M

[CO–956–95–1420–00]

Colorado: Filing of Plats of Survey

January 9, 1996.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. on January 9, 1996.

The amended plat correcting the bearing and distance on the north half mile of line between sections 20 and 21 and correcting the method used and bearing and distance from the true point for the corner of sections 16, 17, 20, and 21, to the witness corner of sections 16, 17, 20, and 21, in Township 10 South, Range 88 West, Sixth Principal Meridian, Colorado, was accepted November 1, 1995.

The notes describing the remonumentation of certain original

corner points in Township 2 North, Range 96 West, of the Sixth Principal Meridian, Colorado, Group 750, was accepted November 30, 1995.

The plat representing a metes-and-bounds survey in certain sections, Township 44 North, Range 12 West, New Mexico Principal Meridian, Colorado, Group 917, was accepted November 28, 1995.

The plat representing a metes-and-bounds survey in certain sections and an informative traverse along Saltado Creek in sections 12 and 13, Township 43 North, Range 12 West, New Mexico Principal Meridian, Colorado, Group 917, was accepted November 28, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 22 and 27 in Township 5 North, Range 99 West, Sixth Principal Meridian, Colorado, Group 1016, was accepted December 13, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Mineral Survey No. 19034, Vanadis No. 11 lode and Mineral Survey No. 19035, Leopard Vanadium No. 1 lode, the subdivision of section 23, and a metes-and-bounds survey in section 23, Township 44 North, Range 11 West, New Mexico Principal Meridian, Colorado, Group 1048, was accepted November 30, 1995.

The plat representing the dependent resurvey of portions of certain mineral claims in section 13, Township 3 South, Range 73 West, Sixth Principal Meridian, Colorado, Group 1052, was accepted November 24, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 15 and 16, and a metes-and-bounds survey in sections 15 and 16, Township 14 South, Range 95 West, Sixth Principal Meridian, Colorado, Group 1095, was accepted October 23, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 9 and 10, in Township 15 South, Range 67 West, Mexico Principal Meridian, Colorado, Group 1101, was accepted November 21, 1995.

The above surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel North, a portion of the subdivisional lines, and a portion of Tracts 54, 55, 59 and 60, Township 9 North, Range 87 West, Sixth Principal Meridian, Colorado, Group 1021, was accepted December 5, 1995.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a of portion of Tract 44, Township 9 North, Range 88 West, Sixth Principal Meridian, Colorado, Group 1021, was accepted December 5, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section survey of section 11, Township 10 South, Range 81 West, Sixth Principal Meridian, Colorado, Group 1055, was accepted December 5, 1995.

The plat representing the metes-and-bounds survey of certain Tracts in protracted sections 10 and 11, in unsurveyed Township 2 South, Range 75 West, Sixth Principal Meridian, Colorado, Group 1119, was accepted December 13, 1995.

The above surveys were executed to meet certain administrative needs of the U.S. Forest Service, Rocky Mountain Region.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 96–606 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Solicitation of Proposals for Big Game Guide-Outfitter Areas on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service is soliciting proposals to conduct commercial big game guiding-outfitting services on three national wildlife refuges in Alaska.

DATES: Proposals accepted from date of publication through postmarked date of February 5, 1996. Hand delivered proposals accepted by respective refuge manager until 4:30 p.m., Alaska Standard Time, Thursday, February 8, 1996.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503; telephone (907) 786–3354 [TTY: 786–3552].

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is requesting proposals to conduct commercial big game guiding-outfitting services within three use areas on National Wildlife Refuges. The offerings include: Arctic Refuge—ARC15; Kodiak Refuge—KOD05; and Yukon Delta Refuge—YKD02. These offerings are for use areas which went unawarded during previous solicitations or have become vacant after being previously awarded. The authorized use period of these permits will be July 1, 1996, through June 30, 1998.

A letter announcing these offerings has recently been sent to all State of Alaska registered big game guide-outfitters.

Copies of the solicitation are available to other interested parties by calling or writing to the above telephone number/address.

Dated: December 1, 1995.

David B. Allen,

Regional Director.

[FR Doc. 96–580 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits 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.*).

PRT–809630

Applicant: Dr. Allen Kurta, Eastern Michigan University, Ypsilanti, Michigan.

The applicant requests a permit to take (capture and release, handle, radio-tag) Indiana Bats (*Myotis sodalis*) in Michigan. The permit is sought for activities proposed to document presence/absence, habitat use, monitor populations, and other research related to recovery of the species.

PRT–809890

Applicant: Corps of Engineers, St. Paul District, St. Paul, Minnesota.

The applicant requests a permit to take (capture and release) Higgins' eye pearly mussels in the Upper Mississippi River, Minnesota River, and St. Croix River. The permit is sought for the purpose of establishing presence or absence of the species at locations proposed for Corps of Engineers projects.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the data of this publication.

Documents and other information submitted with these applications are available for review 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, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: January 10, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–568 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Brett Real Estate, Robinson Development Company, Incorporated, Orange Beach, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Brett Real Estate, Robinson Development Company, Incorporated, (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 22-acre tract of land owned by the Applicant within the city of Orange Beach, Baldwin County, Alabama. The Application proposed to construct a project known as Phoenix VI and VII, which will include two fourteen-story condominium buildings, containing 522 units, their associated landscaped grounds and parking areas, and two dune walkover structures (Project).

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before February 20, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Requests must be in writing to properly process requests. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–809898 in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Mr. Will McDearman at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates,* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes that in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property reveal habitat occupied by ABM. The Applicant's property contains designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to ABM. Habitat alterations due to condominium placement and subsequent human habitation of the project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the incidental take permit based upon submittal of the HCP as proposed. This alternative provides for restrictions that include placing no structures seaward of the designated ABM critical habitat, establishment of several walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems, the creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment of $60,000 to acquire ABM habitat offsite or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures. Another alternative is consideration of a different project design that further minimizes permanent loss of ABM habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

Dated: January 11, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–567 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Proposed Collection of Information—Opportunity for Public Comment

The National Park Service Visitor Services Project, based on the Cooperative Park Studies Unit of the University of Idaho, is proposing to conduct visitor studies at the following parks during FY 96:

	Est. # of responses	Burden hrs.
Everglades National Park	520	104
Chiricahua National Monument/Fort Bowie National Historic Site	480	96
Death Valley National Park	400	80

	Est. # of re-sponses	Burden hrs.
Great Falls Park (George Washington Memorial Parkway)	400	80
Martin Luther King, Jr. National Historic Site	400	80
Prince William Forest Park	400	80
Great Smokey Mountains National Park	800	160
Chamizal National Memorial	400	80
Coulee Dam National Recreation Area	520	104
Annual Totals	4,320	864

Abstract: NPS goal is to learn visitor demographics and visitors' opinions about services and facilities in these parks. Results will be used by managers to improve services, protect resources and better serve the visitors.

Bureau Form Number: None.

Burden Hours: The burden hour estimates are based on 12 minutes to complete each questionnaire and the 80% return rate goal.

Frequency: 7 days at each park.

Description of Respondents: Visitor groups are contacted as they enter the park and are given a mail-back questionnaire if they agree to participate in the survey.

Estimated Completion Time: 12 minutes.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate services and facilities that they used in the parks. The burden is minimized by only contacting visitors during a 7 day period at each park.

The National Park Service is soliciting comments on the need for gathering the information in the proposed visitor studies listed above. The NPS is also asking for comments on the practical utility of the information being gathered, the accuracy of the burden hour estimate, and ways to minimize the burden to visitors to these parks. Make comments to: Dr. Gary E. Machlis, Chief Social Scientist, National Park Service, Main Interior Building, Room 3412, 1849 C Street, N.W., Washington D.C. 20240, phone: 202–208–5391 or 208–885–7129; or Margaret Littlejohn, Visitor Services Project Coordinator, Cooperative Park Studies Unit, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho 83844–1133, phone: 208–885–7863.

Terry Tesar,
Information Collection Clearance Officer.

[FR Doc. 96–548 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–70–M

Concession Permit

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of air transportation services to and from Isle Royale National Park for the public at Isle Royale National Park, Michigan, for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: March 19, 1996.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. There is an existing concessioner for this operation, but the existing concessioner is not entitled to a right of preference in the negotiation of a new permit. This means that the permit will be awarded to the party submitting the best offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60) day following publication of this notice to be considered and evaluated.

Dated: December 6, 1995.

William W. Schenk,
Field Director, Midwest Field Area.

[FR Doc. 96–550 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–70–M

Concession Permit

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of mountain guide service, which also includes day and overnight hiking trips, avalanche seminars, snow and ice climbing schools, sale of mountain climbing and hiking merchandise, and rental of all basic climbing and hiking equipment, for the public at Mount Rainier National Park for a period of five years from January 1, 1996 through December 31, 2001.

EFFECTIVE DATE: March 19, 1996.

ADDRESSES: Interested parties should contact the Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, WA 98304, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner, Rainier Mountaineering, Inc., has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on April 30, 1996, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice.

Any offer, including that of the existing concessioner, must be received by the Deputy Field Director, National Park Service, Attention: Concession Program Management, Suite 630, 909 1st Avenue, Seattle, Washington 98104, not later that the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: October 31, 1995.

William C. Walters,

Deputy Field Director.

[FR Doc. 96–549 Filed 1–18–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–732 and 733 (Final)]

Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–732 and 733 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of circular welded non-alloy steel pipe from Romania and South Africa, provided for in subheading 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of circular welded non-alloy steel pipe from Romania and South Africa are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on April 26, 1995, by Allied Tube, Harvey, IL; ARMCO/Sawhill, Sharon, PA; LTV Steel, Youngstown, OH; Sharon Tube, Sharon, PA; Laclede Steel, St. Louis, MO; Wheatland Tube, Collingswood, NJ; and Century Tube, Pine Bluff, AR.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in these investigations, provided that the application is made not later than 21 days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on April 4, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 17, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 5, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 10, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is April 11, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 23, 1996; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 23, 1996. On May 14, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 17, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: January 11, 1996.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–554 Filed 1–18–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the ''base quantity'' of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 1995, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.30 billion gallons. Seven percent of this amount is 91.0 million gallons (these figures have been rounded). Therefore, the base quantity for 1996 should be 91.0 million gallons.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Harman (202) 205–3313 in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Public Law 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

Issued: December 18, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–498 Filed 1–18–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–724 (Final)]

Manganese Metal From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act),[3] that an industry in the United States is materially injured by reason of imports from the People's Republic of China (China) of manganese metal,[4] provided for in subheadings 8111.00.45 and 8111.00.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 13, 1995, following a preliminary determination by the Department of Commerce that imports of manganese metal from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 6, 1995 (60 FR 35223). The hearing was held in Washington, DC, on November 1, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 15, 1995. The views of the Commission are contained in USITC Publication 2939 (December 1995), entitled ''Manganese Metal from the People's Republic of China: Investigation No. 731–TA–724 (Final).''

Issued: December 18, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–499 Filed 1–18–96; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Peter S. Watson and Commissioner Carol T. Crawford dissenting.

[3] The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act (URAA). See *Pub.* L. 103–465, 108 Stat. 4809 at § 291. Therefore, this investigation was conducted pursuant to the substantive and procedural rules of law that existed prior to the URAA.

[4] For purposes of this investigation, manganese metal is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron, and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms, and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines.

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement and Release, Regarding Matters Relating to Comprehensive Environmental Response, Compensation and Liability Act and Other Environmental Statutes

In accordance with Departmental policy, notice is hereby given that a proposed Settlement Agreement and Release (''Agreement'') in *In re Avtex Fibers Front Royal, Inc.* (''AFFRI''), Bankr. No. 90–20290 (E.D. Pa.), was lodged on December 11, 1995, with the United States Bankruptcy Court for the Eastern District of Pennsylvania. The United States has entered into the Agreement on behalf of the United States Environmental Protection Agency (''EPA'').

The Agreement provides for certain textile spinning nozzles (''jets''), having a precious metal content consisting of approximately 90% platinum, to be melted down, for the precious metal content to be sold, and for the proceeds to be distributed to certain of Debtor's creditors. Specifically, fifty percent of the proceeds of the sale (following payments to the metal refining company, the Trustee, and Trustee's counsel) will go to secured creditors and approximately 29% and 21% of the net proceeds will go to the Commonwealth of Virginia and the United States, respectively. There are six parties to the Agreement, which resolves two contested motions and an adversary action, and should result in the United States recovering between $100,000 and $250,000 against its administrative expense claim in the bankruptcy action. Further, the secured creditors will release their liens on debtor's real estate, leaving EPA with the senior lien on the realty, a 440-acre parcel.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Avtex Fibers Front Royal, Inc.*, DOJ Ref. #90–11–3–372.

The proposed Agreement may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1300, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–600 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Lodging Consent Decree Pursuant to the Clean Water Act; Bridgeview Joint Venture

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a consent decree in *United States* v. *Bridgeview Joint Venture,* Civ. No. 94–C–3184, (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on or about December 19, 1995. This Consent Decree concerns a Complaint filed by the United States against several defendants pursuant to section 309 of the Clean Water Act (''CWA''), 33 U.S.C. 1319, to obtain injunctive relief and impose civil penalties upon the Defendants for discharges of dredged or fill material in violation of CWA section 301(a), 33 U.S.C. 1311(a), and for subsequent violation of an EPA Administrative Order issued pursuant to CWA section 309(a), 33 U.S.C. 1319(a).

The Consent Decree prohibits additional illegal discharges by the Defendants, requires either restoration of, or mitigation for, wetland areas buried under the fill, provides for payment of a civil penalty in the amount of $170,000, and further provides for a supplemental environmental project in lieu of additional penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Michael D. Rowe, Esq., 10th Street and Constitution Ave., N.W., Room 7115-Main Bldg., Washington, D.C. 20530, and refer to *United States* v. *Bridgeview Joint Venture,* DOJ. Ref. No. 90–5–1–1–5009.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, and at the following additional locations: 1) The United States Department of Justice, Environmental Defense Section, 9th Street & Pennsylvania Ave., N.W., Washington, DC 20026 (Contact Elizabeth Baxter at (202) 514–9763); and 2) United States Environmental Protection Agency, Region 5, Office of the Regional Counsel 200 West Adams, 29th Floor, Chicago, IL 60604 (Contact Thomas Martin at (312) 886–4273).

Letitia J. Grishaw,

Chief, Environmental Defense Section.

[FR Doc. 96–456 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Trustees for Alaska* versus *Hickel,* Civ. No. A92–245 CIV (JKS) (D. Alaska), was lodged with the United States District Court for the District of Alaska on December 19, 1995. The proposed decree concerns violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, involving the discharge of dredged or fill materials into the Copper River, its tributaries and adjacent ponds and wetlands by the Alaska Department of Transportation and Public Facilities (''DOT/PF'') during 1991 road construction along the Copper River between Chitina and Cordova, Alaska.

The Consent Decree includes the following terms: (1) Restoration of areas that suffered environmental harm; (2) development of a program to educate DOT/PF personnel about the requirements of the Clean Water Act; (3) establishment of an Environmental Compliance Coordinator or Consultant to coordinate Clean Water Act permitting issues; (4) a commitment to broadcast televised public service announcements about the importance of complying with the Clean Water Act; (5) an admission that DOT/PF violated the Clean Water Act; (6) an injunction from further violations of the Clean Water Act; and (7) a civil penalty totalling $600,000, the majority of which will be assessed through mutually agreed upon environmental projects designed to benefit the Copper River watershed. The remainder of the civil penalty will be set off against liability of the federal government in a separate case. The settlement makes it clear that further road work along the Copper River corridor may now proceed, but only in compliance with federal laws and regulations, including the Clean Water Act.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Mark A. Nitczynski, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *Trustees for Alaska* versus *Hickel,* DJ Reference No. 90–5–1–4–336.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Alaska, 222 W. 7th Ave. No. 9, Anchorage, Alaska

99513; or, upon request to Mark A. Nitczynski, (202) 514–3785. In requesting a copy, please enclose a check in the amount of $_____ for a copy of the Consent Decree with attachments.

Anna Wolgast,

Acting Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 96–599 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on December 15, 1995, a proposed Consent Decree in *United States* versus *Niagara Transformer Corporation,* Civil No. 89–CV–1358, was lodged with the United States District Court for the Western District of New York. The proposed Consent Decree will settle the United States' claims against Niagara Transformer under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for response costs and natural resource damages incurred at the Wide Beach Development Superfund Site in Brant, New York.

Under the terms of the Consent Decree, Niagara Transformer will pay to the United States as reimbursement of response costs incurred a total of $869,569, plus interest, in three installments by March 1, 1997. Niagara Transformer will also pay to the United States for natural resource damages a total of $57,974, plus interest, on the same schedule.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Niagara Transformer Corporation,* D.O.J. Ref. 90–11–3–417.

The proposed Consent Decree may be examined at the Region II Office of the United States Environmental Protection Agency, 290 Broadway, New York, NY 10007, and at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Enviromental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–604 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Other Authorities

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on December 21, 1995, a proposed Consent Decree in *United States* v. *Occidental Chemical Corporation, et al. (Love Canal),* Civil Action No. 79–990 (JTC), was lodged with the United States District Court for the Western District of New York. The decree represents a settlement of claims by the United States against Occidental Chemical Corporation (Occidental) for recovery, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 7003 of the Resource Conservation and Recovery Act (RCRA) and other authorities, of costs and interest incurred in response to the release of hazardous substances at the Love Canal Landfill Site near Niagara Falls, New York.

Under the settlement, Occidental will reimburse response costs incurred by the Environmental Protection Agency Superfund and the Federal Emergency Management Agency in connection with the relocation of Love Canal area residents, Site studies and remediation, oversight, litigation and other expenses. Occidental will pay $129 million dollars in four equal annual installments of $32,250,000 commencing 90 days after entry of the Decree, plus additional interest on each $32,250,000 installment calculated from August 1, 1995 at the rate established by CERCLA. Occidental will also pay certain additional expenses of the United States incurred since August 1, 1995. Further, Occidental will pay $375,000 for natural resource damages restoration and assessment, with preferential review accorded a creek restoration project in Niagara County. In addition to the payments by Occidental, the United States will contribute an additional $8 million to the Superfund and on behalf of FEMA to resolve counterclaims by Occidental against the United States.

Under the partial consent decree between the United States and Occidental, which was entered by the Court on September 20, 1989, Occidental agreed to complete remediation of Love Canal Site sewers and creeks and to dispose of hazardous wastes. The instant decree in no way alters those obligations. Similarly, the instance decree will not affect the New York State Consent Judgment, which was approved by the Court on July 1, 1994, under which Occidental agreed to perform operation and maintenance (O & M) of the remedy. Finally, Occidental agrees in the proposed decree that the United States may independently enforce against Occidental the O & M obligations it accepted under the State Consent Judgment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Occidental Chemical Corporation,* D.J. Ref. 90–5–1–1–1229. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of New York, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–605 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, as provided in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America, Plaintiff* v. *Tri-State Mint, Inc. et al., Defendants/Counterclaimants* v.

United States of America, Counterdefendant, Civil Action No. 92–4032, was lodged on December 15, 1995, with the United States District Court for the District of South Dakota, Southern Division. The proposed consent decree requires Tri-State Mint, Inc., Tri-State Professional Recovery, Inc., Von Hoff International, Inc., and Robert Hoff, the former owners/operators of the Tri-State Mint C Avenue site located in Sioux Falls, South Dakota (''Site''), to pay the United States $820,000.00 (plus specified interest accrued from August 17, 1995, through the date of payment) in reimbursement of the United States' past response costs incurred in connection with the release or threatened release of hazardous substances at the Site. General Properties Corporation, one of the original defendants in this civil action, was dismissed from this lawsuit on or about November 23, 1993, and is not a party to this Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America, Plaintiff* v. *Tri-State Mint, Inc. et al., Defendants/Counterclaimants* v. *United States of America, Counterdefendant,* DOJ Ref. #90–11–3–696.

The proposed consent decree may be examined at the Office of the United States Attorney, District of South Dakota, 230 S. Phillips Ave. #600 57102; the Region VIII Office of the Environmental Protection Agency, 999 18th Street—Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the proposed decree and attachment, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–601 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on June 16, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Frame Relay Forum (''FRF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of FRF are: PCSI, San Diego, CA; Computerm Corporation, Pittsburgh, PA; Southern New England Telephone, Newhaven, CT; DIGI International, Eden Prairie, MN; ADTRAN, Huntsville, AL; and US Robotics Corporation, Skokie, IL. New auditing members are: Polish Telecom, Warsaw, POLAND; and BRAK Systems, Inc., Mississauga, Ontario, CANADA. Companies who are no longer members are: CBIS and LightStream.

No other changes have been made in either the membership or planned activities of FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on March 20, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on May 31, 1995 (60 FR 28430).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–602 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing Company

Notice is hereby given that, on June 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Minnesota Mining and Manufacturing Company (''3M'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Minnesota Mining and Manufacturing Company, St. Paul, MN; and Lockheed Aeronautical Systems Company, a division of Lockheed Corporation, a Lockheed Martin Company, Marietta, GA. The nature and purpose of the venture is to develop film products and associated products and techniques which can replace paint on aircraft exteriors in order to preserve the physical aircraft integrity within regulatory constraints and within feasible economic means.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–603 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–41]

Homayoun Homayouni, M.D.; Continuation of Registration With Restrictions

On March 21, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Homayoun Homayouni, M.D., (Respondent), of Northfield, New Jersey, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BH0295748, under 21 U.S.C. § 824(a)(4), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. § 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

1. On at least six occasions between November 1988 and March 1989 [the Respondent] allegedly wrote prescriptions for controlled substances to undercover officers without a legitimate medical reason in exchange for cash and failed to maintain medical records of the transactions.

2. On April 14, 1989, the New Jersey State Board of Medical Examiners (Medical Board) temporarily suspended [the Respondent's] license to practice medicine and surgery because of the aforementioned allegations.

3. On August 9, 1989, the Medical Board suspended [the Respondent's] state medical license for five years, the first two years active and the remainder as a period of probation. In addition, [the Respondent was] ordered to pay the sum of $12,145.35 in

penalties and trial costs, to contribute 300 hours of community service, and [to] complete a mini-residency in appropriate prescribing of Controlled Dangerous Substances.

4. On December 1, 1989, [the Respondent was] convicted, on a guilty plea, of one count of failure to keep records of distribution of drugs (Vicodin, Hydrocodone Bitartrate, Tylenol) in New Jersey Superior Court, Atlantic County, and sentenced to two years probation, a $10,000.00 fine, and 200 hours [of] community service.

5. On April 16, 1991, the Medical Board reinstated [the Respondent's] state medical license. Shortly thereafter, the New Jersey State Department of Health, Division of Alcoholism and Drug Abuse[,] renewed [the Respondent's] expired New Jersey Controlled Dangerous Substance registration.

On April 14, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania, on March 7–8, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On June 5, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Deputy Administrator permit the Respondent to retain his DEA Certificate of Registration. Neither party filed exceptions to his decision, and on July 17, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. § 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, with noted exceptions, the opinion and recommended ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is licensed to practice medicine in New Jersey. He was born and educated in Iran, but he performed his internship and residency training in the United States. In late 1987, the Respondent established a private practice in Atlantic County, New Jersey.

In late 1988 and early 1989, an undercover investigation was initiated in which an informant (Informant) working for the Atlantic County Prosecutors Office met with the Respondent on November 21, 1988, and on November 29, 1988. At these two meetings, the Respondent provided the Informant with prescriptions for controlled substances, including Tylenol No. 3, Valium, and Vicodin, and at each visit, the Informant paid the Respondent $50.00 for the prescriptions. The Informant tape recorded these transactions, and Judge Tenney admitted transcripts of these recordings into evidence. At each meeting, no medical examination was conducted, and the Informant presented no medical symptoms or complaints. At the November 29, 1988 meeting, the Respondent told the Informant, ''don't come too frequent, it makes it *suspicious.*'' (Emphasis added). The parties stipulated that Valium, a brand name for diazepam, is a Schedule IV controlled substance pursuant to 21 C.F.R. § 1308.14(c), Tylenol No. 3 is a Schedule III controlled substance pursuant to 21 C.F.R. § 1308.13, and Vicodin is a brand name for a product containing hydrocodone bitartrate, which is a Schedule III controlled substance pursuant to 21 C.F.R. § 1308.13(e).

On December 5, 1988, the Respondent met with an investigator, (Investigator), who had identified herself as a friend of the Informant. The Investigator requested a prescription for Fiorinal, a Schedule III controlled substance pursuant to 21 C.F.R. § 1308.13. During her conversation with the Respondent, the Investigator twice denied that she suffered from headaches. However, the Respondent wrote a prescription for Fiorinal, and she paid him $50.00 for the prescription. On December 16, 1988, the Investigator unsuccessfully tried to obtain a prescription from the Respondent for Vicodin for the Informant, and Dilaudid for herself. However, the Respondent did give her a prescription for Fiorinal, writing on the prescription that the medication was ''for migraine headache only.''

On January 12, 1989, the Investigator, accompanied by a Sergeant from her office, visited the Respondent, and he issued prescriptions for Fiorinal for the Investigator, and diazepam, a Schedule IV controlled substance pursuant to 21 C.F.R. § 1308.14(c), for the Sergeant. They paid the Respondent $100.00. The Respondent questioned the Sergeant as to whether she had made any ''suicide attempts or anything.'' the Sergeant responded ''[n]o.'' However, the Respondent took no further medical history nor performed any medical examination. On January 24, 1989, the Sergeant again met with the Respondent, and she did not inform him of any symptoms necessitating medication. However, the Respondent gave her a prescription for Fiorinal and diazepam. On March 2, 1989, both the Investigator and the Sergeant returned to the Respondent's office, and he asked the Investigator whether she had any headaches, to which she replied ''No.'' The Respondent continued to question why she wanted a prescription for Fiorinal, and the Investigator stated that it ''relaxed'' her. The Respondent explained that he wanted to change the Investigator's medication, stating: ''Yea, let me change a little the category of the medication *so you don't get caught and you don't get questioned and eh, it would be better for me, as well.*'' (Emphasis added). He then changed her prescription to Xanax, a Schedule IV controlled substance pursuant to 21 C.F.R. § 1308.14(c), and he changed the Sergeant's prescription to Tranxene, also a Schedule IV controlled substance.

On the same day, after that transaction, a search warrant was executed by a Captain of the Atlantic County Prosecutors Office, and he recovered from the Respondent's wallet the $100.00 paid by the Investigator and the Sergeant for their prescriptions. Although the officers searched for patient records pertaining to the Investigator and the Sergeant, none were found.

At the hearing before Judge Tenney, the Respondent asserted that the Informant had ''fooled'' him, and that he had not suspected anything illicit in his motives for wanting controlled substances. The Respondent also testified that the Informant had told him that the Investigator suffered from migraine headaches, and that she usually took Fiorinal for relief. He denied hearing the Investigator's negative response to his question concerning migraine headaches, asserting instead that he thought she had said ''yes'' to his headache question. In his opinion, Judge Tenney noted that ''From a cultural standpoint, [the Respondent] was somewhat unfamiliar with the presence and habits of drug-abusers in the United States of America in 1988–89. He also has some problems with the English language.''

On March 15, 1989, the Attorney General of New Jersey filed with the New Jersey State Board of Medical Examiners (Medical Board) an application for a temporary suspension of the Respondent's license to practice medicine. He also filed a Verified Complaint and Application (Complaint) which listed various charges against the Respondent based on allegations that he had issued prescriptions between December of 1988 and March of 1989 to undercover officers without adequate

examination or medical justification, and without maintaining any medical records. In April of 1989, the Medical Board issued an order temporarily suspending the Respondent's medical license pending a State administrative hearing on the Complaint. In that Order, the Medical Board wrote:

The Board has undertaken to review the evidence, particularly the transcripts of the visits by the undercover investigators. The Board finds sufficient indicia to conclude that these five visits amount to nothing more than commercial transactions, exchanging fifty dollars for each of the eight substances prescribed. From the start, it would seem apparent that the doctors knew or should have known that the patient [Investigator] presented no symptomology which would warrant the issuance of a prescription for Fiorinal. . . . Their visit together is totally devoid of any medical information. . . . His first interaction with patient [Sergeant] was similarly devoid of any effort to elicit from her any medical symptomology which might explain her desire to obtain medication. His willingness to give patient [Sergeant] a prescription for two medications when he knew that the Fiorinal was intended for use by patient [Investigator], is further evidence of his willingness to use his licensure privileges in exchange for money. . . . *In the Board's view, the cash transactions represented by the eight counts of the Complaint have all the trappings of a ''drug deal.''*

Our review of these facts, coupled with the doctor's post arrest interview, his acknowledgement of the authenticity of the prescriptions and his failure to have created a treatment record with regard to these patients, leads us to the inescapable conclusion that the doctor has failed to exercise sufficient judgment so that we can trust his ability to render safe medical care to his patients.

(Emphasis added)

Prior to a State administrative hearing on the allegations contained in the Complaint, the Respondent indicated his willingness to plead ''no contest'' and to seek resolution of the matter through a consensual agreement. The Board agreed, issuing an Order on August 9, 1989, which contained the following mutually agreed upon conditions: suspension of the Respondent's medical license for five years—two years' active and total suspension, and three years of probation, provided the Respondent complies with stated conditions; payment of a fine and costs totalling $12,145.35; contribution of 300 hours of community service; successful completion of a mini-residency course on the appropriate procedures for prescribing controlled dangerous substances; and attendance at a status conference prior to reinstatement of his license, so that the Respondent can demonstrate his ''capacity and competence to re-enter the practice of medicine and surgery and his familiarity with and understanding of the laws and rules specifically applicable to licensees of this Board.''

On October 12, 1989, as part of a plea bargain, the Respondent pled guilty in State court to a New Jersey controlled dangerous substances record-keeping violation. He was sentenced to two years' probation, 200 hours of community service, and a fine of $10,000.00.

As of April 16, 1994, the Respondent's medical license was restored without limitation. By letter, the Executive Director of the Medical Board wrote: ''According to Board records, after the conclusion of the active period of suspension, [the Respondent] resumed medical practice under the probationary period, and all provisions of the Order have been satisfactorily completed.'' Therefore, the Board deemed the Respondent ''eligible'' to be a DEA registrant, while acknowledging that ''the granting of that privilege [rested] solely within the authority of the [DEA].'' Further, the parties stipulated, and testimony was received at the hearing before Judge Tenney, that since 1989, the DEA had conducted no further investigations, had no knowledge of any future allegations regarding the Respondent and his handling of controlled substances, and knew of no further investigations or allegations by the Atlantic County's Prosecutor's Office of misconduct pertaining to the Respondent's practice. Also, no complaints or malpractice suits had been filed against the Respondent concerning the quality of his medical services. The record also contains numerous written documents from individuals, including colleagues and patients, writing to support the Respondent's application and to attest to the fact that he is a caring and compassionate physician.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research will respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.,* Docket No. 88–42, 54 Fed. Reg. 16,422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Medical Board issued a temporary suspension of the Respondent's medical license within weeks of his arrest in March of 1989. Further, the Medical Board ultimately suspended the Respondent's medical license for two years and placed it in a probationary status subject to ordered conditions. However, on April 16, 1994, the Respondent's medical license was restored without restrictions, and evidence was presented to show that the Respondent complied with all ordered conditions, to include the successful completion of a mini-residency course dealing with the procedures to follow for the appropriate prescribing of controlled dangerous substances. The Medical Board also wrote that it deemed the Respondent ''eligible'' to be a DEA registrant. Judge Tenney also noted that ''it is clear that the 'recommendation of the appropriate State licensing board or professional disciplinary authority' strongly favors the Respondent. . . . Thus, the State of New Jersey no longer believes that the Respondent is a danger to the public.''

As to factor two, the Respondent's ''experience in dispensing . . . controlled substances,'' the Deputy Administrator agrees with Judge Tenney's conclusion that ''[b]ased on the evidence presented at the hearing, there can be no doubt that the Respondent's practice of dispensing controlled substances to the under cover officers was woefully inadequate. He dispensed controlled substances absent appropriate indications that the substances were medically necessary, and he failed to document the dispensation.'' Further, the observations by the Medical Board, that the Respondent's conduct in 1988 and 1989 was analogous to ''commercial transactions'' or a ''drug deal,'' were substantiated by the transcripts of the

individual interactions between the Respondent, the Informant, the Investigator, and the Sergeant. The Deputy Administrator agrees with Judge Tenney's conclusion, that ''notwithstanding any evidence that tends to favor the Respondent, a preponderance of the evidence supports the conclusion that the Respondent knowingly dispensed controlled substances for illegitimate purposes.''

However, the evidence also shows that since the Respondent's probationary reinstatement of his medical license in April of 1991, no investigations or allegations have been raised concerning the Respondent's dispensing of controlled substances. Further, the evidence supports a conclusion that the Respondent has also completed remedial training relevant to his handling of controlled substances. Again, the Deputy Administrator agrees with Judge Tenney's conclusion that ''the Respondent's illicit behavior in 1988–89 is minimized by his conduct since that time.''

As to factor three, the Respondent's ''conviction record under Federal or State laws relating to . . . dispensing of controlled substances,'' the evidence demonstrates that the Respondent pled guilty on October 12, 1989, to a New Jersey controlled dangerous substances record-keeping violation, and he was sentenced to two years' probation, 200 hours of community service, and a monetary fine. The Respondent's ''conviction record'' is thus relevant in determining the public's interest in his continued registration with the DEA.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the Government argued that the Respondent violated State law in his dispensing activities in 1988 and 1989, as found by the Medical Board. However, Judge Tenney noted that the Government ''[did] not reference, or provide the text of, any specific statutes with which the Respondent allegedly failed to comply, nor does it point to any State entity's finding that the Respondent violated any laws other than the record-keeping provision discussed under factor (3)'' as pertaining to his State conviction. Thus, the Deputy Administrator agrees with Judge Tenney's conclusion that factor four is of limited significance given the evidence of record.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator finds relevant an observation made by Judge Tenney that the DEA took no action against the Respondent's registration while he was actively suspended from practicing medicine by the New Jersey Medical Board. Further, he noted that ''[t]he delay from April of 1991 until March of 1994, however, tends to suggest, albeit slightly, that the DEA did not consider the Respondent to be a serious threat to the public health and safety.''

Further, the Government argues that the Respondent remains ''unable or unwilling to understand or admit the true nature of the activities for which the government issued a show cause [order].'' Judge Tenney noted that, based upon the Respondent's testimony before him, ''[t]here is little doubt that the Respondent is still under the illusion that he was an innocent participant in the 1988–89 undercover transactions.'' However, the evidence supports a contrary finding, for the transcripts of the exchanges between the Respondent and the undercover investigators clearly show that the Respondent was aware that he was prescribing controlled substances for illegitimate purposes. Significant was the Respondent's change of controlled substances prescribed to the Investigator and the Sergeant, and his statement, ''Yea, let me change a little the category of the medication so you don't get caught and you don't get questioned and eh, it would be better for me, as well.'' No mention was made of a legitimate medical purpose for prescribing controlled substances in this instance or to substantiate the change in medication prescribed. Such evidence makes the Respondent's contention that he was an innocent ''fooled'' by the assertions of his patients incredible.

However, the Deputy Administrator also finds compelling Judge Tenney's observations concerning the Respondent's credible remorse for his misconduct. He wrote that the Respondent, an Iranian by birth, was ''a proud man, who sincerely [was] ashamed of his conduct, even though his pride apparently contribute[d] to his inability to be completely candid regarding that conduct.'' Furthermore, the Respondent also provided extensive evidence from colleagues and patients of his caring and compassionate treatment of his patients. Also, the record contains no evidence of any investigation or allegations of misconduct regarding the Respondent's medical practices since 1989.

In analyzing this diverse evidence relevant to the Respondent's likely future conduct and the public interest, Judge Tenney emphasized the unique nature of this case. Specifically, he noted that in previous cases, when a respondent had failed to admit to the full extent of his involvement in documented misconduct involving controlled substances, Judge Tenney had then discounted the testimony of that respondent and doubted such a respondent's commitment to compliance with the Controlled Substances Act in future practice. *See, e.g., Prince George Daniels, D.D.S.,* Docket No. 94–23, 60 Fed. Reg. 62,884 (1995); *Albert L. Pulliam, M.D.,* Docket No. 94–11, 60 Fed. Reg. 54,513 (1995). Here, however, Judge Tenney found that the weight of the evidence favored the continued registration of this Respondent because of the unique circumstances of his case.

The Deputy Administrator, in considering all the evidence and the submission of the parties, agrees with Judge Tenney and concludes that the Respondent's DEA Certificate of Registration should not be revoked at this time. However, he also finds that the imposition of certain restrictions upon the Respondent's continued registration will ''allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances.'' *Steven M. Gardner, M.D.,* Docket No. 85–26, 51 Fed. Reg. 12,576 (1986). Specifically, the Respondent is to maintain a log of all controlled substance prescriptions issued or authorized by him for a period of two years from the date of this Order's publication in the Federal Register. He is also to provide a copy of this log on a quarterly basis to the Special Agent in Charge of the DEA Newark Field Division, or his designee, and this individual, consistent with this Order, will determine specific data to be recorded on this log. Therefore, the Deputy Administrator finds that the public interest is best served by continuing the Respondent's DEA Certificate of Registration subject to compliance with the above enumerated requirements.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that Certificate of Registration BH0295748, issued to Homayoun Homayouni, M.D., be continued, and any pending applications be granted, with the above restrictions. This order is effective upon publication in the Federal Register.

Dated: January 4, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–465 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on February 1, 1996, from 9 am until 5 pm at The Crystal City Marriott, Potomac Ballroom, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the September 1995 meeting; a discussion and adoption of DAB by-laws; a review and discussion of DNA standards-related issues; a discussion of population statistics issues; a presentation by the American Board of Criminalistics; a presentation concerning the NIJ-solicited DNA proficiency testing study; and a discussion of topics for the next DNA Advisory Board meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½″ × 11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Randall S. Murch, Chief, Scientific Analysis Section, Laboratory Division, Tenth Street Northwest, Washington, D. C. 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: January 11, 1996.

Randall S. Murch,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 96–634 Filed 1–18–96; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

National Skill Standards Board; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of re-scheduled open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8 a.m. to approximately 4:30 p.m. on Thursday, February 22, 1996, in the Dolly Madison Ballroom, 2nd Floor of the Madison Hotel at 15th & M Streets N.W., Washington, D.C.

AGENDA: The agenda for the Board Meeting will include presentations on Existing Occupational Classification Systems, and Education and Employer collaboration with the National Skill Standards Board.

PUBLIC PARTICIPATION: The meeting from 8 a.m. to 4:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Claire Grenewald at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Claire Grenewald at (202) 254–8628.

Signed at Washington, D.C., this 11th day of January, 1996.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 96–577 Filed 1–18–96; 8:45 am]

BILLING CODE 4510–23–M

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Consumer Price Index Commodities and Services Survey

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Consumer Price Index Commodities and Services Survey.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before March 19, 1996.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington DC 20212.

FOR FURTHER INFORMATION CONTACT: Ms. Kurz on 202—606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Federal law requires BLS, under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Consumer Price Index (CPI) is one of these statistics, and the collection of data from a wide spectrum of retail establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services component of the CPI.

The CPI is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is a measure of the average change in prices paid by urban consumers for a fixed market basket of goods and services.

The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of government economic policy. It is also used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars. A third major use of the CPI is to adjust income payments. About 2.8 million workers are covered by collective bargaining contracts which provide for increases in wage rates based on increases in the CPI.

II. Current Actions

The continuation of the collection of prices for the CPI is essential since the CPI is the nation's chief source of information on retail price changes. If the information on prices of commodities and services were not collected, Federal fiscal and monetary polices would be hampered due to the lack of information on price changes in a major sector of the U.S. economy, and estimates of the real value of the Gross Domestic Product (GDP) could not be made. The consequences for both the Federal and private sectors would be far-reaching and would have serious repercussions of Federal government policy and institutions.

The transient increase in the number of respondents is due to recurrent replacement in item and geographic sampling. With the 1998 CPI revision, substantial changes are being made to the CPI item classification structure. New pricing areas will be sampled to support this new item structure and the overlapping geographic areas will have new samples drawn wherever it is necessary in order to support this new structure.

Currently, data for the CPI are collected by CPI field staff in assigned retail outlets. The field staff record the data on schedules and mail the data to Washington, D.C. for processing. A key element in the 1998 CPI revision is the conversion of all data collection and transmission to electronic systems. A fully-implemented Computer-Assisted Data Collection (CADC) system for the CPI will result in significant advantages by increasing productivity and improving the overall quality of the CPI.

Electronic data collection and transmission will provide long-term savings through a major reduction of mail, paper, and printing costs. Electronic systems will provide the opportunity to reduce data capture, survey logistics management, and review staffs.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Frequency: Semi-annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 52,104.

Estimated Time Per Response: 16 minutes.

Total Burden Hours: 91,487 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 16th day of January, 1996.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–578 Filed 1–8–96; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Alien Labor Certification Activity Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Alien Labor Certification Activity Report, Form ETA 9037.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before March 19, 1996.

Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Flora T. Richardson, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue N.W., Washington, DC 20210,

202–219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Alien Labor Certification Program operates under regulations at 20 CFR 655 and 656. The Alien Certification Program, as administered by the Department of Labor, requires the State employment security agencies (SESAs) to initially process applications for alien certifications filed by U.S. employers on behalf of alien workers wishing to enter the U.S. for permanent employment and certain temporary employment purposes, conduct wage surveys, provide wage information to U.S. employers wishing to employ foreign workers, conduct housing inspections of facilities employers offer to migrant and seasonal workers, and recruit for qualified U.S. workers for employers applying for alien certification. The SESAs perform these functions under a reimbursable grant that is awarded annually. The data from this report provides important program information about SESA workload in a number of immigration programs and provides ETA with more timely management information. The data is used for program monitoring and evaluation and for future distribution of alien certification funds.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0015. There is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Title: Alien Labor Certification Activity Report.

OMB Number: 1205–0015.

Frequency: Semi-Annually.

Affected Public: Regional, State or local governments.

Number of Respondents: 54.

Estimated Time Per Respondent: 2 hours per response.

Total Estimated Cost: No Cost to Respondent.

Total Burden Hours: 216.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 15, 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment Training Administration.

[FR Doc. 96–576 Filed 1–18–96; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its August 15, 1995, application for proposed amendment to Facility Operating License Nos. NPF–72 and NPF–77, for the Braidwood Station, Unit 1, located in Will County, Illinois.

The proposed amendment would have modified the facility technical specifications to renew the 1.0 volt interim plugging criteria (IPC) for the Braidwood, Unit 1, steam generators (SG) in accordance with Generic Letter 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generators Tubes Affected by Outside Diameter Stress Corrosion Cracking,'' dated August 3, 1995. This request was made as a contingency in the event that the 3.0 volt IPC which ComEd had previously submitted on February 13, 1995, was not approved in order to support the startup of Braidwood, Unit 1, from the Cycle 5 refueling outage. On November 9, 1995, the NRC issued Amendment No. 69, thereby nullifying the August 15, 1995, request. Subsequently, by letter dated November 13, 1995, you withdrew the amendment request.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on October 5, 1995, (60 FR 52222). However, by letter dated November 13, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 15, 1995, and the licensee's letter dated November 13, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 1st day of January 1996.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–527 Filed 1–18–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Interim Final Amendments to OMB's Governmentwide Guidance on Lobbying.

SUMMARY: The ''Lobbying Disclosure Act of 1995,'' signed by the President on December 19, 1995, included some amendments to 31 U.S. Code Section 1352, popularly known as the Byrd Amendment. The new law makes these amendments effective January 1, 1996. In response to the Byrd Amendment, in December 1989, OMB issued interim final guidance entitled ''Governmentwide Guidance for New Restrictions on Lobbying.'' Today's notice includes amendments to OMB's December 1989 guidance to reflect the new statute.

DATES: These interim final amendments are effective January 1, 1996. Comments must be in writing and must be received by March 19, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Office of Management and Budget, Lobbying Docket, Room 6025, New Executive Office Building, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202–395–3952. Electronic mail comments may be submitted via Internet to KAHLOW—B@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: For grants and loans, contact Barbara F. Kahlow, Office of Federal Financial Management, OMB (telephone: 202–395–3053). For contracts, contact Richard C. Loeb, Office of Federal

Procurement Policy, OMB (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Background

On December 19, 1995, the President signed the ''Lobbying Disclosure Act of 1995'' (Pub. L. 104–65). This Act includes some amendments to 31 U.S. Code Section 1352, popularly known as the Byrd Amendment, which was signed into law on October 23, 1989 (Pub. L. 101–121). The new law makes these amendments effective January 1, 1996.

The Byrd Amendment required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of the Byrd Amendment. On December 18, 1989 (published December 20, 1989), OMB issued interim final guidance entitled ''Governmentwide Guidance for New Restrictions on Lobbying'' (54 FR 52306). The Conference Report called for major agencies, as designated by OMB, to issue a common rule complying with OMB's guidance. On February 26, 1990, 29 agencies co-signed such an interim final common rule (55 FR 6736). A second interim final common rule, part of the Federal Acquisition Regulation (FAR), for most contracts was published on January 30, 1990 (55 FR 3190).

Today's notice includes amendments to OMB's December 1989 guidance to reflect the new lobbying statute. These amendments will apply governmentwide and will subsequently be reflected in the two governmentwide common rules.

The new lobbying statute essentially made three changes to the Byrd Amendment. The law: (a) simplified the information required by 31 U.S.C. 1352(b)(2)–(3) to be disclosed; (b) eliminated the requirement in 31 U.S.C. 1352(b)(6) that agencies submit semi-annual compilations to Congress; and, (c) eliminated the requirement in 31 U.S.C. 1352(d) for the Inspectors General's annual report to Congress.

B. Paperwork Reduction Act

These amendments contain information collection requirements subject to the Paperwork Reduction Act. A Paperwork Reduction Act emergency approval was requested by OMB pursuant to 44 U.S.C. 3507(j) and 5 CFR 1320.13 and was granted under OMB control number 0348–0046. OMB estimates a substantial reduction in reporting burden due to these amendments. Instead of the prior estimate of 30 minutes per response, OMB estimates only 10 minutes per response.

Alice M. Rivlin,

Director.

PART ____ NEW RESTRICTIONS ON LOBBYING

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

Authority: Sec. 319, Pub. L. 101–121, 103 Stat. 750, as amended by sec. 10, Pub. L. 104–65, 109 Stat. 700 (31 U.S.C. 1352).

2. Subpart F (Agency Reports), consisting of § _____.600 (Semi-annual compilation) and § _____.605 (Inspector General report), is removed.

3. In Appendix B, Standard Form (SF)–LLL, Disclosure of Lobbying Activities, is amended as follows:

a. Item 10a is amended by revising ''Name and Address of Lobbying Entity'' to read ''Name and Address of Lobbying Registrant'';

b. In item 10, the statement ''(attach Continuation Sheet(s) SF–LLL–A, if necessary)'' is removed; and,

c. Items 11 through 15 are removed.

4. In Appendix B, the Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities are amended as follows:

a. In the introductory text, remove the sentence ''Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate.'';

b. The instruction for item 10(a) is amended by revising ''lobbying entity'' to read ''registrant under the Lobbying Disclosure Act of 1995''; and,

c. The instructions for items 11 through 15 are removed.

5. The SF-LLL-A Disclosure of Lobbying Activities Continuation Sheet is removed.

[FR Doc. 96–529 Filed 1–18–96; 8:45 am]

BILLING CODE 3110–01–P

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request has been submitted to the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs for emergency processing under 5 CFR 1320.13. The information collection request is for amendments to the Standard Form (SF)–LLL, Disclosure of Lobbying Activities, as necessitated by the ''Lobbying Disclosure Act of 1995, which became law on December 19, 1995 and which becomes effective January 1, 1996. This early effective date necessitates a request for emergency processing for approval for 90 days.

The SF–LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by OMB's governmentwide guidance for new restrictions on lobbying, which was issued under 31 U.S.C. 1352 (popularly know as the ''Byrd Amendment''). The new lobbying statute simplified the information required to be disclosed under 31 U.S.C. 1352. A companion notice in today's Federal Register solicits comments on the revised SF–LLL.

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Office of Federal Financial Management, OMB (telephone: 202–395–3053).

ADDRESSES: Written comments should be sent to: Edward Springer, OMB Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10236 New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–530 Filed 1–18–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Countries: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public concerning acts, policies, and practices to be considered with respect to identification of countries under section 182 of the Trade Act of 1974, as amended (Trade Act).

SUMMARY: Section 182 of the Trade Act requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. 19 U.S.C. 2242. In addition, the USTR is required to determine which of the countries identified should be designated as priority foreign countries. Priority foreign countries typically are subject to a ''special'' 301

investigation of the acts, policies or practices which led to their designation.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Tuesday, February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual property (202) 395–6864; JoEllen Urban, Director for Intellectual Property (202) 395–6864; or Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

USTR must decide whether to identify countries as priority foreign countries each year and issue a decision within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1996. Priority foreign countries typically are subject to a ''special'' 301 investigation of the acts, policies or practices which led to their designation.

Requirements for Submissions

Submissions should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) (55 FR 20593) and must be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, Room 223, 600 17th Street NW., Washington, DC 20506, no later than 12 noon on Tuesday, February 20, 1996. Because submissions will be placed in a file open to public inspection at USTR, business-confidential information should be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Donald Abelson,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 96–531 Filed 1–18–96; 8:45 am]

BILLING CODE 3190–01–M

PENSION BENEFIT GUARANTY CORPORATION

Disaster Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of disaster relief in response to the Blizzard of '96.

SUMMARY: The Pension Benefit Guaranty Corporation is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review, standard and distress termination, and disclosure to participants regulations. This relief is generally available to persons residing in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the Blizzard of '96.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Six areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, (4) deadlines for filing a distress termination notice and, in the case of a plan that is sufficient for guaranteed benefits, issuing notices of benefit distribution and completing the distribution of plan assets, (5) deadlines for filing requests for reconsideration or appeals of certain agency determinations; and (6) deadlines for issuing Participant Notices under ERISA section 4011.

On January 12, 13, and 14, 1996, the President of the United States issued a series of declarations, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the Blizzard of '96 in certain locations. At this time, Maryland, the District of Columbia, Delaware, New York, Kentucky, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia are designated major disaster areas (within the meaning of Federal Emergency Management Agency regulations; 44 CFR 205.2(a)(5)).

Given the severity of the Blizzard of '96, as the Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, standard and distress termination deadlines, and Participant Notice deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business, or for which the office of a service provider, bank, insurance company, or other person maintaining information necessary to meet the applicable deadlines, is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the

service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area.

Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after January 6, 1996, and before January 31, 1996, if the payment is made by January 31, 1996. The PBGC is not permitted by law to waive late payment interest charges. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

Section 4071 Penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices required to be filed with the PBGC on or after January 6, 1996, and before January 31, 1996, if the notice is filed by January 31, 1996:

(1) Post-distribution certification for single-employer plan (PBGC Form 501 or 602; ERISA section 4041(b)(3)(B) or (c)(3)(B); 29 CFR 2617.28(h) or 2616.29(b)),

(2) Notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2),

(3) Notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)), and

(4) Reportable event notice, except for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or transactions involving a change in contributing sponsor or controlled group (29 CFR 2615.21, 2615.22, and 2615.23), or reportable events described in amended ERISA section 4043(c)(9)–(12). (Subsection (b) of section 4043 was redesignated as subsection (c) and amended, in part, with the addition of new reportable events in paragraphs (9) through (12) by section 771(c)(3) of the Retirement Protection Act of 1994 (''RPA amendments'').)

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed:

(1) Notice of failure to make required contributions totaling more than $1 million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.31). The timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late.

(2) Notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. The timely filed notice must include at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable.

(3) Notice of a reportable event described in the RPA amendments for which notice is required no later than 30 days after the event occurs.

(A) If the event is reportable under both the RPA amendments and 29 CFR 2615, the notice will be considered timely filed if the notice satisfies the requirements described in paragraph (2) above.

(B) If the event is reportable only under the RPA amendments, the notice will be considered timely filed if the notice includes at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9).

(4) Notice of a reportable event described in the RPA amendments for which notice is required at least 30 days before the event occurs. The notice will be considered timely filed if the filer makes a good faith effort to include with the notice at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable, may be filed late and should be filed as soon thereafter as it is available.

This relief applies to notices required to be filed with the PBGC on or after January 6, 1996, and before January 31, 1996, provided that all supporting information and documentation are filed by January 31, 1996.

Standard and Distress Termination Notices and Distribution of Assets

With respect to a standard termination for which the standard termination notice is required to be filed, or the distribution of plan assets is required to be completed, on or after January 6, 1996 and before January 31, 1996, the PBGC is (pursuant to 29 CFR 2617.25(a)(2) and 2617.28(f)(4)) extending to January 31, 1996, the time within which the standard termination notice must be filed (and, thus, the time within which notices of plan benefits must be provided) and the time within which the distribution of plan assets must be completed. With respect to a distress termination for which the distress termination notice is required to be filed or, in the case of a plan that is sufficient for guaranteed benefits, other actions must be taken on or after January 6, 1996 and before January 31, 1996, the PBGC is (pursuant to 29 CFR 2616.10(a) and 2616.24(d)) extending to January 31, 1996, the time within which the termination notice must be filed and, in the case of a plan that is sufficient for guaranteed benefits, notices of benefit distribution must be provided and plan assets must be distributed. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification.

Requests for Reconsideration or Appeals

For persons who are aggrieved by certain agency determinations and for whom a request for reconsideration or an appeal is required to be filed on or after January 6, 1996, and before January 31, 1996, the PBGC is (pursuant to 29 CFR 2606.4(b)) extending the time for filing to January 31, 1996.

Participant Notices

For Participant Notices that are required to be issued on or after January 6, 1996, and before January 31, 1996, the PBGC is (pursuant to 29 CFR 2627.8) extending the due date to January 31, 1996.

Applying for Waivers/Extensions

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print ''BLIZZARD OF '96, State of (fill in appropriate state)'' at the top center.

Issued in Washington, DC this 16th day of January, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–695 Filed 1–18–96; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Railroad Job Vacancies: OMB 3220–0122.

Section 12(k) of the Railroad Unemployment Insurance Act (RUIA), authorizes the RRB to operate an employment service. In conjunction with this service, the RRB requests railroad employers to report job vacancy information to the agency. Although furnishing the job information is voluntary, failure to comply defeats the purpose of the RRB's placement program by decreasing the opportunities for reemployment of persons claiming railroad unemployment insurance benefits. This, in turn, increases the amounts of benefits charged to employers, and can affect contribution rates under the RUIA. The RRB maintains and distributes a list of railroad job vacancies by class and craft based on information furnished by rail carriers to the RRB. Railroad employers report railroad job vacancies to office(s) of the RRB via telephone or mail. The information collected is electronically distributed to all RRB field offices to assist agency personnel in finding jobs for individuals separated from their railroad employer.

The RRB issues instructions in the form of a circular letter which explains in detail how rail carriers should report job vacancies to the RRB. The circular letter is distributed to railroad hiring officials and chief executives of all covered employers. A minor editorial change is being proposed to the informational circular letter.

Estimate of Annual Respondent Burden

The annual respondent burden is estimated to be 125 hours annually. The estimate is based on 250 rail carriers filing an average of 3 reports annually with each report taking about 10 minutes to complete.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–610 Filed 1–18–96; 8:45 am]

BILLING CODE 7905–01–M

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Availability for Work

Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, ''available for work'' is defined as being willing and ready for work. This section further provides that a person is ''willing'' to work if that person is willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. The section also provides that a claimant is ''ready'' for work if her or she; (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work. In order to determine whether a claimant is; a) available for work, and b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from his union employer. One response is completed by each respondent. Minor editorial changes are being proposed to all three forms.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (Min)	Burden (Hrs)
UI–38s:			
In person	300	6	30
By mail	700	10	117
UI–38	5,300	11.5	1,016
ID–8k	4,300	5	358
Total	10,600	.....	1,521

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–611 Filed 1–18–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36685; File No. SR–DTC–95–23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Seeking to Implement the Matching Feature in the Institutional Delivery System

January 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 8, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No SR–DTC–95–23) as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to implement the matching feature in DTC's Institutional Delivery (''ID'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission previously approved a proposed rule change filed by DTC generally describing several enhancements to the ID system, including the matching feature which is the subject of this proposed rule change, that it planned to implement.[3] This proposed rule change seeks to implement the matching feature.

The matching feature is an alternative to the current procedures for confirmation and affirmation processing in the ID system. If a broker-dealer and an institution elect to use the matching feature, the ID system will interactively match trade data received from the broker-dealer with institution instructions received from the institution. If the trade data and institution instructions match and if the institution also is the affirming party, the ID system will produce a matched affirmed confirmation. At this point, the broker-dealer and institution will not have to take any other action for the trade to settle other than action that normally would have to be taken if the standard confirm/affirm procedures were followed. If the trade data and institution instructions match but the institution does not have affirming authority, the ID system will produce a matched confirmation requiring affirmation by the designated affirming party. In the ID system, the affirming party may be an institution, an agent, or an interested party.

Throughout the day, broker-dealers and institutions will be able to use the ID system's inquiry capabilities to view any unmatched items. At the end of the day, an Unmatched Report will be generated for each broker-dealer and institution. This report will list all broker-dealer trade input and institution instructions that were not matched by end of day. Unmatched trades appearing on this report will be carried over from day to day unless the broker-dealer cancels its instruction or the institution affirms the trade.

DTC believes the proposed rule change is consistent with the requirements of Sections 17A(b)(3) (A) and (F)[4] of the Act because the proposed rule change will promote efficiencies in the clearance and settlement of securities transactions. DTC believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change will be implemented as enhancements to DTC's existing ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been developed through widespread consultations with securities industry members, as described in DTC's earlier filing describing the ID system enhancements.[5] Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving proposed rule change relating to the enhanced ID system.

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[5] *Supra* note 3.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–95–23 and should be submitted by February 9, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–509 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36697; File No. SR–NSCC–95–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding an Agreement Between the National Securities Clearing Corporation (''NSCC'') and the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Concerning the Provision of Financial and Operation Information With Respect to NSCC Members and Correspondent Broker-Dealers of Such Members

January 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change relates to agreements between NSCC and the National Association of Securities Dealers, Inc. (''NASD'') and between NSCC and the New York Stock Exchange, Inc. (''NYSE'') concerning the provision of financial and operational information to NSCC with respect to its members and its members' correspondent broker-dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC has entered into agreements (''Agreements'') with the NASD and with the NYSE pursuant to which the NASD and the NYSE are to provide certain information directly to NSCC.[3] The information to be provided will include, without limitation, financial, trading, and operational information relating to NSCC members and correspondent broker-dealers of such members. Under its rules, NSCC is entitled to obtain such information directly from its members.

The Agreements are based on NSCC's existing Rule 2 and Rule 15. NSCC Rule 2, Section 2(f) provides that each applicant seeking to become a member of NSCC shall agree in writing that its books and records shall at all times be open to inspection by the duly authorized representatives of NSCC and that NSCC shall be furnished with all such information with respect to its business and transactions as NSCC may require. Rule 15, Section 2 provides that NSCC shall have the authority to examine the financial responsibility and operational capability of any settling member. Rule 15, Section 2 further provides that in conducting such examinations NSCC may require a settling member to furnish such information, to make its books and records available, and to demonstrate the financial responsibility and operational capability of the settling member. Rule 15 also provides that NSCC may require adequate assurances of the financial responsibility or operational capability of a settling member.

The information contemplated by NSCC Rules 2 and 15 includes information relating to correspondent broker-dealers that clear through settling members. Under these rules, NSCC also may require a settling member to obtain information on its correspondent broker-dealers and provide it to NSCC. NSCC has routinely asked for and received such information from its settling members. By having the NASD and the NYSE directly provide NSCC with information regarding its members and their correspondent broker-dealers that NSCC is entitled to obtain from its settling members under NSCC Rules 2 and 15, the Agreements will permit a more rapid integration of such information into NSCC's risk management system and will alleviate the administrative burdens on its members of providing this information.

NSCC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it is intended to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the rule filing will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the rule filing have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of

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[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Copies of the Agreements are attached as Exhibit A to NSCC's proposed rule change filed with the Commission.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

NSCC or for which it is responsible. The Commission believes the proposed rule change is consistent with these requirements because it will allow NSCC faster and more efficient access to critical risk-based data of its members and its members' correspondent broker-dealers which should allow for more rapid integration of such information into NSCC's risk management system. Moreover, because NSCC now will have direct access to this information from the NASD and the NYSE, NSCC should be able to better monitor the activities of its members and their correspondent broker-dealers which should assist NSCC in fulfilling its obligation under Section 17A to safeguard securities and funds under NSCC's custody or control or for which it is responsible

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause because accelerated approval will permit NSCC to receive the risk-based information regarding its members and their correspondent broker-dealers directly from the NASD and the NYSE thus enabling NSCC to include the information in its risk management system in a more timely fashion. Furthermore, because the risk-based information NSCC will receive from the NASD and the NYSE is information NSCC's members are obligated to and already do submit to NSCC, the Commission does not expect to receive any adverse comments on the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–95–16 and should be submitted by February 9, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–16) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–510 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12)(1994).

[Release No. 34–36698; File No. SR–NASD–95–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Regarding Rearranging of Rules and a New Rule Numbering System for The NASD Manual

January 11, 1996.

On November 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change rearranges the current NASD Manual by renumbering the Rules of the Association.

Notice of proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 36517, November 27, 1995) and by publication in the Federal Register (60 FR 62116, December 4, 1995). No comment letters were received. This order approves the proposed rule change.

The NASD Manual currently is arranged with multiple rule sections with each section of rules subsequently indexed in various ways. This rule change is a non-substantive reorganization of the existing Rules. All Rules in the NASD Manual, including not only the current Rules of Fair Practice, but also such specialized Rules as the PORTAL Rules, Nasdaq Rules, Code of Arbitration Procedure, and so forth, have been numbered consecutively throughout the Manual and considered together as ''Rules.'' In addition, a common numbering and naming scheme for subdivisions within a Rule has been implemented.

The NASD proposes to make the rule change effective no later than six months from the date of approval, although it anticipates an effective date no later than May 1, 1996.[3] The NASD will provide notice to its membership of the definite effective date by way of publication in the Notice to Members.[4] In the interim period between the date of approval and the effective date of the revised Rules, any proposed rule changes by the NASD will include the old rule language and number, with a footnote which will indicate the new rule language and number. Any future NASD rule proposals will also refer to the Commission's approval order and the planned effective date of the revision. This should minimize any confusion to the industry and to the public.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] because the rule change will protect investors and the public interest by simplifying the layout of the NASD Manual. There will now be a more logical progression of the Rules within the Manual. This in turn will assist NASD members and non-members in utilizing the Manual.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–51 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–541 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4

[3] *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated January 4, 1996 (''Amendment No. 1'').

[4] In addition, the NASD will file a proposed rule change, pursuant to Section 19(b)(3)(A) of the Act, with the Commission to ensure proper notice in the Federal Register of the definitive effective date.

[5] 15 U.S.C. 78*o*–3.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–36701; File No. SR–NYSE–95–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Specialist System Charge

January 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 21, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On January 4, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Beginning January 1, 1996, the Exchange plans to institute changes affecting the Specialist System Charge. This charge will be reduced, and the method of payment calculation will be changed. The current Specialist System Charge will be changed from $0.65 per eligible order with an annual aggregate maximum fee of $9 million to a fixed aggregate fee of $7 million to be allocated evenly over twelve months with each specialist unit contributing monthly according to its percentage of eligible system orders. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Specialist System Charge [- per Order]

[Charge per eligible order placed through CMS (1) $0.65]

$7 million per annum is aggregate to be allocated evenly over 12 months with each specialist unit contributing monthly according to its percentage of eligible system orders. (1)

(1) Individual or agency market orders from 100–2099 shares *placed through CMS* [excluding competing market maker orders].

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarified that competing market maker orders are considered ''eligible system orders'' for purposes of the Specialist System Charge. *See* Letter dated January 3, 1996, from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the change is to provide a more equitable distribution of the Exchange's overall charges among its constituents and to respond to overall competitive market conditions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b) (4)[4] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6]

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549.[7] Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–44 and should be submitted by February 9, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–542 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21662; 812–9636]

Brinson Relationship Funds and Brinson Partners, Inc.; Notice of Application

January 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Brinson Relationship Funds (the ''Trust'') and Brinson Partners, Inc. (the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a).

[7] 17 CFR 200.30–3(a)(12).

SUMMARY OF APPLICATION: Applicants request relief from section 17(a) to permit series of the Trust to invest in other series of the Trust.

FILING DATES: The application was filed on June 20, 1995, and was amended on September 5, 1995 and December 1, 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. Hearing requests should be received by the SEC by 5:30 p.m. on January 30, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 209 South LaSalle Street, Chicago, Illinois 60604–1295.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust is comprised of six series (the ''Series''): Brinson Global Securities Fund, Brinson Short-Term Fund, Brinson Post-Venture Fund, Brinson High Yield Fund, Brinson Emerging Markets Equity Fund, and Brinson Emerging Markets Debt Fund. Applicants request that any relief granted pursuant to this application also apply to any subsequently created Series of the Trust for which the Adviser, any entity resulting from the Adviser changing its jurisdiction or form of organization, or any entity controlling, controlled by, or under common control with the Adviser serves as investment adviser.

2. Shares of the Trust may only be purchased by ''accredited investors'' within the meaning of Regulation D under the Securities Act of 1933. The Trust does not impose any sales charge, redemption fee, advisory fee, or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act (a ''12b–1 Fee'').

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser provides investment advisory services to each Series of the Trust, but it does not receive any compensation for these services under its investment advisory agreement with the Trust.

4. Fund/Plan Services, Inc. (the ''Administrator'') provides general administrative, accounting, pricing, and transfer agency services to each Series of the Trust pursuant to a multiple services agreement. Bankers Trust Company (the ''Custodian'') serves as the custodian for the securities and cash of each Series pursuant to a custodial agreement.

5. Applicants propose that, subject to certain limitations, each Series of the Trust be permitted to purchase and redeem shares of each of the other Series of the Trust (''Investing Series''), and that each Series be permitted to sell shares to, and redeem shares from, each of the other Series (''Target Series''). Each Investing Series would be permitted to invest a portion of its assets in Target Series that primarily invest in certain securities.

6. For example, in seeking to achieve its objective, a portion of Brinson Global Securities Fund's assets may be invested in the debt and equity securities of emerging market issuers. Brinson Emerging Markets Equity Fund invests in the equity securities of issuers in emerging markets, and Brinson Emerging Markets Debt Fund invests in the debt securities of issuers in emerging markets. Applicants propose that if the requested order is granted, Brinson Global Securities Fund could invest that portion of its assets designated for investment in the equity securities and debt securities of issuers in emerging markets in Brinson Emerging Markets Equity Fund and Brinson Emerging Markets Debt Fund, respectively. These investments would be made in accordance with the Investing Series' investment objectives and policies, and would be within the limitations of section 12(d)(1) of the Act.

7. The Investing Series will retain the ability to invest their assets directly in securities as authorized by their respective investment objectives and policies. Thus, if the Adviser believes that it could more economically invest a Series' assets directly in a particular type of security, then such direct investment would be made. In addition, each Target Series reserves the right to discontinue selling shares to any Investing Series if the Trust's board of trustees determines that sales of Target Series shares to the Investing Series would adversely affect the Target Series' portfolio management and operations.

Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property. The Series may be deemed to be affiliated persons within the meaning of section 2(a)(3) of the Act because they are each advised by the Adviser, and could thus be considered under common control.

2. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants request an exemption under sections 6(c) and 17(b) granting relief from section 17(a) to permit the proposed transactions. Applicants state that the terms of the proposed transactions are fair and reasonable, and do not involve overreaching. The consideration paid and received for the sale and redemption of shares of a Target Series will be based on the net asset value of the Target Series' shares. In addition, shares of the Series are not subject to any sales loads, redemption fees, 12b–1 Fees, or advisory fees. Under the conditions to the requested order, there will be no duplication of administrative or custodial fees, since the Administrator, Custodian, and their respective affiliates will remit to an Investing Series, or waive, an amount equal to all fees received by them or their affiliates to the extent such fees are based upon assets of the Investing Series invested in a Target Series. Any of these fees remitted or waived will not be subject to recoupment by the

Administrator, Custodian, nor their affiliates.

4. Applicants assert that the proposed transactions are consistent with the policies of each Series, as an Investing Series' investment in shares of a Target Series will be effected in accordance with each Investing Series' investment restrictions. Applicants also assert that permitting an Investing Series to invest that portion of its assets allocated to a particular type of security in the corresponding Target Series of the Trust would produce greater diversification, lower costs, and administrative efficiency for the Investing Series.

5. Applicants state that, for any particular Investing Series, the percentage of the Series' assets allocated to a particular type of security at a particular time may not be large enough to make direct investments in such securities economical.

Further, where a Series only allocates a small percentage of its assets to a particular type of security, applicants argue that it is inefficient to burden portfolio managers of the Investing Series with studying and following numerous issuers. Applicants assert that, where an Investing Series invests in a Target Series rather than directly investing in shares of certain securities, the Investing Series is able to invest in, and be exposed to, a greater range of issuers. Applicants asserts that this greater diversification decreases the risk and volatility of investing in particular securities.

6. Applicants assert that the proposed transactions are consistent with protection of investors and the general purposes of the Act.

Applicants' Conditions

Applicants' agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each Investing Series' investment in shares of any Target Series will be in accordance with the percentage limitations set forth in section 12(d)(1)(A) of the Act.

2. Shares of each Series will not be subject to a sales load, redemption fee, advisory fee, or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act.

3. Investment in shares of a Target Series will be in accordance with each Investing Series' respective investment restrictions and will be consistent with its policies as recited in its registration statement.

4. Applicants will cause the Adviser, Administrator, Custodian, and their respective affiliates, in their capacities as service providers for the Target Series, to remit to the respective Investing Series, or waive, an amount equal to all fees received by them or their affiliates under their respective agreements with the Trust on behalf of the Target Series to the extent such fees are based upon the Investing Series' assets invested in the shares of a Target Series. Any of these fees remitted or waived will not be subject to recoupment by the Adviser, Administrator, Custodian, or their respective affiliates at a later date.

5. If the Adviser waives any portion of a Target Series' fees or bears any portion of the expenses of a Target Series (an ''Expense Waiver''), the adjusted fees for a Target Series (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 4. Adjusted fees then will be reduced by the amount waived pursuant to condition 4. If the amount waived pursuant to condition 4 exceeds adjusted fees, the Adviser also will reimburse the Investing Series in an amount equal to such excess.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–512 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26449]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

January 5, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing in January 29, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70–8703)

Consolidated Natural Gas Company (''CNG''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania, 15222–3199, a registered holding company, CNG's nonutility subsidiaries, CNG Energy Services Corporation (''Energy Services''), and CNG Products and Services, Inc. (''CNG Products''), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, have filed an application-declaration under sections 9(a), 10, 12(b) and 12(c) of the Act and rule 43, 44, 45 and 54 thereunder.

Consolidated, Energy Services and CNG Power propose to effect a restructuring of a group of companies in the CNG System (''System''), which are in the nonutility energy business. The resulting configuration would cause this part of the System to conform more substantially with its managerial reporting structure.

By Commission order dated August 28, 1995 (HCAR No. 26363), CNG and Energy Services were authorized to form CNG Products, which then was called CNG Special Products and Services, Inc. All of the issued and outstanding common stock of CNG Products are at this time owned by Energy Services. It is now proposed that the ownership of CNG Products be transferred from Energy Services to CNG in the form of a dividend by Energy Services to CNG of all of the outstanding common stock of CNG Products.

By Commission order dated December 21, 1990 (HCAR No. 25224), CNG through CNG Power, was authorized to form CNG Technologies, Inc. (''CNGT'') and to invest up to $2 million in CNGT for it to acquire limited partnership interests in a gas industry fund created to invest in smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. By subsequent Commission order dated August 27, 1992 (HCAR No. 25615) (''Order''), CNG was authorized to provide up to $25 million to CNG Power's Natural Gas Vehicle Division (''Division''), through December 31, 1997, to allow it to engage in natural gas vehicle activities. In order to have CNG Power's activities more

concentrated in independent power production, it is proposed to move the outstanding shares of common stock of CNGT and the Division to CNG Products after it becomes a direct subsidiary of CNG.

It is proposed that CNG Power sell all of the CNGT common stock (''Common'') to CNG Products for its net book value, which was $1,994,000 at October 8, 1995. To finance the acquisition of the Common, CNG Products proposes to sell up to 220 shares of its common stock at its par value of $10,000 per share to CNG.

The transfer of the Division would be effected by CNG Power declaring a dividend of the Division's assets to CNG, with subsequent transfer of the assets to CNG Products as a contribution to capital by CNG. It is proposed that CNG Products would also succeed to the same authority granted to CNG Power in the Order.

By order dated October 21, 1994 (HCAR No. 26148), CNG Power was authorized to acquire all of the issued and outstanding shares of common stock of CNG Market Center Services, Inc., (''CNG Market Center''). As part of the movement of CNG Power from being a direct subsidiary of CNG to being a direct subsidiary of Energy Services, CNG Power proposes to transfer as a dividend to CNG all of the issued and outstanding shares of common stock of CNG Market Center.

By Commission order dated February 27, 1987 (HCAR No. 24329), CNG was authorized to acquire all of the issued and outstanding shares of common stock of CNG Power, which was then called CNG Trading Company. CNG now proposes to transfer these shares as a capital contribution to Energy Services.

By Commission order dated May 13, 1991 (HCAR No. 25311), CNG was authorized to acquire all of the issued and outstanding shares of common stock of CNG Storage Service Company (''CNG Storage''). CNG now proposes to transfer these shares as a capital contribution to Energy Services.

Allegheny Power System, Inc., et al. (70–8751)

Allegheny Power System, Inc. (''APS''), a registered holding company, and AYP Capital, Inc. (''AYP''), a non utility subsidiary company of APS, both of 12 East 49th Street, New York, New York, 10017, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rule 45 thereunder.

AYP proposes to invest up to $5 million to engage in preliminary development activities in connection with new technologies related to the core business of APS and to invest up to $15 million to acquire an interest and to become a limited partner in a Delaware limited partnership (''Partnership''). the Partnership will invest in companies (''Portfolio Companies'') engaged in the development of new technologies, products or services related to the core business of APS.

AYP will acquire all of the limited partnership interests in the Partnership. The sole general partner will be Advent International Corporation (''Advent''), a venture capital investment firm. APS proposes to provide the funds needed by AYP to engage in those preliminary development activities and to acquire the interests in the Partnership. APS will obtain such funds from sales of common stock, commercial paper sales, and generated funds.

The term of the Partnership shall be for ten years from the date of a Limited Partnership Agreement (''Agreement), subject to extension for up to two years. The Agreement provides that AYP shall contribute to the capital of the Partnership cash in the amount of 10% of its capital commitment of $15 million. Thereafter, the balance of the capital commitment of $13.5 million shall be due and payable in cash installments.

Subject to certain limitations set forth in the Agreement, the management, operation, and implementation of policy of the Partnership will be vested in Advent alone. Advent shall have discretion to invest funds in accordance with investment guidelines set forth in the Investment Charter attached to the Agreement. However, after execution of the Agreement, no term or provision shall be waived, modified or amended, unless AYP has given its prior consent, nor shall investments be made in new technologies that AYP deems unrelated to its core business.

AYP will be entitled to receive notices and other information from Advent, to inspect books and records, to attend discussions with potential Portfolio Companies and to vote on a limited number of actions that could fundamentally change the structure and purposes of the Partnership. AYP will have no independent right to vote on whether to invest in particular Portfolio Companies or to remove Advent, except for cause or a substantial change in the management of Advent.

Advent will be paid an annual management fee up to 3.5% of the total committed capital, as well as a 20% share of net gains and income on investments. All Partnership income and losses will be allocated 80% to the AYP and 20% to Advent. Distributions in kind of the securities of Portfolio Companies might be made. Unless AYP obtains approval from the Commission to retain such securities, AYP undertakes that it will sell such securities within one year from the date of its receipt thereof.

Savannah Electric and Power Company (70–8753)

Allegheny electric and Power Company (''Savannah''), 600 East Bay Street, Savannah, Georgia 31401, an electric public-utility subsidiary of The Southern Company, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

Savannah proposes to enter into arrangements with the Savannah Economic Development Authority (''authority''), a public corporation and an instrumentality of the State of Georgia, for the issuance and sale of the Authority's industrial development revenue bonds (''Revenue Bonds'') in an aggregate principal amount not exceeding $7 million for payment of the costs of acquiring, constructing, installing and equipping a project (''Project'') consisting of mooring dolphins, pilings and a coal conveying system for off-loading coal from barges or ships, including a dock, foundations and related facilities, for delivering coal to Savannah's Plant Kraft (Port Wentworth) in Chatham county, Georgia. The Revenue Bonds will be issued and sold, and the related transactions (as described herein) will be consummated, no later than June 30, 1996.

The Revenue Bonds will be issued under and secured by a Trust Indenture (''Trust Indenture'') between the Authority and a banking institution acting as trustee (''Trustee'') for the owners of the Revenue Bonds. The Revenue Bonds, which are anticipated to be fully subject to taxation under applicable federal and state tax laws, will mature (subject to prior redemption) on a date not more than 30 years after the date on which they are initially issued.

The proceeds from the Authority's sale of the Revenue Bonds will be deposited with the Trustee and will be applied by Savannah to payment of the cost of construction of the Project.

The Revenue Bonds initially will bear interest at an interest rate determined weekly until converted at the direction of Savannah to a different interest rate mode permitted under the Trust Indenture. Other permitted modes will include interest periods of one month's, three months' and six months' duration. Savannah also may convert the interest

rate on the Revenue Bonds to a fixed rate to their stated maturity. The interest rate on the Revenue Bonds will not at any time exceed 2% plus the yield on U.S. Treasury securities having a comparable maturity.

Except as otherwise provided in the Trust Indenture, the interest rate in each such mode will be determined by the remarketing agent (''Remarketing Agent'') as the minimum rate of interest necessary, in the judgment of the Remarketing Agent, to enable the Remarketing Agent to sell the Revenue Bonds at a price equal to the principal amount thereof plus accrued interest, if any, thereon. SunTrust Bank, Atlanta (which bank is also expected to serve as placement agent for the Revenue Bonds) will initially serve as Remarketing Agent. Savannah will agree to pay the Remarketing Agent an annual fee not exceeding ¼ of 1% of the principal amount of the Revenue Bonds outstanding.

The Trust Indenture provides that the Revenue Bonds will be subject to purchase on the demand of the owners thereof and to mandatory purchase upon the occurrence of certain events, as set forth in the Trust Indenture. Such mandatory purchase events include conversion of the interest rate mode to a fixed rate of interest to the stated maturity of the Revenue Bonds.

The Revenue Bonds will be subject to redemption at the direction of Savannah as provided in the Trust Indenture. The Revenue Bonds may be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the initial aggregate principal amount of the issue prior to maturity.

In connection with the issuance of the Revenue Bonds, Savannah proposes to grant the Authority an estate for years in the real property on which the Project is being constructed for a term coinciding with the term of the Revenue Bonds. Savannah additionally proposes to enter into a Lease Agreement with the Authority (''Agreement''). The Agreement will provide for the Authority's lease of the Project to Savannah and Savannah's lease of the Project from the Authority. Savannah will agree pursuant to the Agreement to pay to the Trustee, as assignee of the Authority, from time to time as the amount owed thereunder in respect of the lease of the Project, amounts which, and at or before times which, shall correspond to the payments with respect to the principal of and premium, if any, and interest on the Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise, and the purchase price of Revenue Bonds required to be purchased under the Trust Indenture. The Agreement will also obligate Savannah to pay the fees and charges of the Trustee and all costs of operating, maintaining and repairing the Project.

The Agreement will provide that, upon its expiration or termination, all right, title and interest in and to the Project will revert to Savannah.

Savannah further proposes to enter into arrangements with the Authority and SunTrust Bank, Atlanta (or other entity or entities) acting as placement agent with respect to the issuance and sale by the Authority of the Revenue Bonds. Pursuant to such arrangements, the placement agent is to agree to use its best efforts to arrange for the sale of the Revenue Bonds at a purchase price of 100% of the principal amount thereof, and Savannah will pay the placement agent's fee for its services in an amount not exceeding 1% of the principal amount of the Revenue Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–508 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21661; 812–9936]

Funds IV Trust, et al.; Notice of Application

January 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Funds IV Trust (the ''Trust'') and Bank IV, National Association (the ''Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Fourth Financial Corporation (''Fourth Financial''), the parent of the Adviser to the Trust, will merge with and into Acquisition Sub, Inc. (''ASI''), a wholly-owned subsidiary of Boatmen's Bancshares, Inc. (''Boatmen's''). The merger will result in the assignment, and thus the termination, of the existing investment advisory contract between the Trust and the Adviser. The order would permit the implementation, without shareholder approval, of a new advisory contract for a period of up to 120 days following the date of the merger (but in no event later than May 30, 1996) (''Interim Period''). The order also would permit the Adviser to receive from the Trust fees earned under the new investment advisory contract during the Interim Period following approval by the Trust's shareholders.

FILING DATE: The application was filed on January 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 30, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Funds IV Trust, c/o Furman Selz Incorporated, 237 Park Avenue, Suite 910, New York, New York 10017, Attention John J. Pileggi; Bank IV, 100 North Broadway, Wichita, Kansas 67202, Attention: Philip Owings, Senior Vice President.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–-0573, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware business trust and is registered under the Act as an open-end management investment company. Each of the following funds is a series of the Trust: U.S. Treasury Reserve Money Market Fund, Short-Term Treasury Income Fund, Intermediate Bond Income Fund, Bond Income Fund, Stock Appreciation Fund, Aggressive Stock Appreciation Fund, Value Stock Appreciation Fund, and International Equity Fund (collectively, the ''Funds'').

2. The Adviser is a wholly-owned subsidiary of Fourth Financial and is a bank within the meaning of section 2(a)(5) of the Act. The Trust has entered

into an investment advisory agreement (the ''Existing Agreement'') with the Adviser, under which the Adviser provides investment advisory services to the Trust.

3. Under an Agreement and Plan of Merger (the ''Merger Agreement'') dated August 25, 1995 among Fourth Financial, Boatmen's, and ASI, Fourth Financial agreed to merge with and into ASI.

4. On January 15, 1996, in accordance with section 15(c) of the Act, the board is scheduled to vote on the new investment advisory agreement between the Adviser and the Trust with respect to the Funds (the ''New Agreement'').[1] During the meeting, the board, a majority of which is comprised of members who are not ''interested persons'' (''Independent Trustees'') will consider the New Agreement to be entered into upon consummation of the Merger. The board will evaluate the New Agreement after receiving such information as they deem reasonably necessary to evaluate whether the terms of the New Agreement are in the best interests of the Funds and their shareholders. The New Agreement is identical to the Existing Agreement, except for its effective date.

5. The Adviser had planned to propose that the Trustees take action in January, 1996 to approve the New Agreement and to call a meeting of shareholders of each Fund to vote on the New Agreement in February or March, 1996. Fourth Financial recently was advised that the necessary bank regulatory approval for the Merger could occur more rapidly and that the Merger date could be advanced to as early as January 31, 1996. Although the Trust has prepared the required proxy materials and has scheduled shareholder meetings for February 13, 1996 to approve the New Agreement, there may not be an adequate solicitation period to obtain approval of the New Agreement by shareholders of each Fund before the Merger occurs.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution as escrow agent. The arrangement would provide that: (a) the fees payable to the Adviser during the Interim Period under the New Agreement would be paid into an interest-bearing escrow account maintained by the escrow agent; (b) the amounts in the escrow account with respect to each Fund (including interest earned on such paid fees) would be paid to the Adviser only upon approval by the Fund shareholders of the New Agreement, or in the absence of such approval, to the respective Fund.

Applicants' Legal Analysis:

1. Applicants seek an exemption pursuant to section 6(c) from section 15(a) of the Act to permit the implementation, without shareholder approval, of the New Agreement during the Interim Period. Applicants also request permission for the Adviser to receive from each Fund all fees earned under the New Agreement implemented during the Interim Period if and to the extent the New Agreement is approved by the shareholders of such Fund. Applicants anticipate that the Merger could occur as early as January 31, 1996. Accordingly, the exemption would cover the period commencing on the date of the Merger and continuing through the date the New Agreement is approved or disapproved by the shareholders of the respective Funds, which period shall be no longer than 120 days following the termination of the Existing Agreement (but in no event later than May 30, 1996).

2. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

3. Upon completion of the Merger, Fourth Financial will merge into ASI. Because Fourth Financial is the Adviser's parent, the Merger will result in an ''assignment'' of the Existing Agreement within the meaning of section 2(a)(4). Consistent with section 15(a), therefore, the Existing Agreement will terminate according to its terms upon completion of the Merger.

4. Rule 15a-4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Because the Adviser will receive a benefit in connection with the assignment of the Existing Agreement, applicants may not rely on rule 15a-4.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

6. Applicants believe that the requested relief is necessary, as it would permit continuity of investment management to each Fund during the period following the Merger so that services to the Funds would not be disrupted. Applicants believe that the Interim Period they request will facilitate the orderly and reasonable consideration of the New Agreements by the Funds' shareholders in a manner that is consistent with the provisions of section 15 as well as the corporate governance objectives of the Act.

7. Applicants believe that the best interests of Fund shareholders would be served if the Adviser receives fees for services rendered during the Interim Period. These fees are essential to maintaining the Adviser's ability to provide services to the Funds. In addition, the fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Funds under the Existing Agreement.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement will have the same terms and conditions as the Existing Agreement, except for its effective date.

2. Fees earned by the Adviser in respect of the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Adviser in accordance with the New Agreement, after the requisite approvals are obtained, or (b) to the respective Fund, in the absence of such approvals.

3. The Trust's board of trustees, including a majority of the Independent Trustees, will have approved the New Agreement in accordance with section 15(c) of the Act.

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

4. The Funds will hold meetings of shareholders to vote on approval of the New Agreement on or before the 120th day following the termination of the Existing Agreement (but in no event later than May 20, 1996).

5. The Adviser or Fourth Financial will bear the costs of preparing and filing this application and the costs relating to the solicitation of Fund shareholder approval necessitated by the Merger.

6. The Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the board, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the board to assure that they, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–511 Filed 1–18–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8721]

Oregon; Declaration of Disaster Loan Area

Tillamook County and the contiguous counties of Clatsop, Columbia, Lincoln, Polk, Yamhill and Washington in the State of Oregon constitute an economic injury disaster loan area caused by landslides due to severe weather including flooding which occurred from October through December, 1995. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on September 20, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: December 20, 1995.

Cassandra M. Pulley,

Deputy Administrator.

[FR Doc. 96–543 Filed 1–18–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2811]

U.S. Territory of the Virgin Islands; Amendment #3

The above numbered Declaration is hereby amended, effective December 20, 1995 to extend the termination date for filing applications for physical damage until January 15, 1996. The termination date for economic injury remains the same, June 17, 1996, at the previously designated location.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 21, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–544 Filed 1–18–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2316]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Dangerous Goods, Solid Cargoes and Containers; Notice of Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on January 26, 1996, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the First Session of the Subcommittee on Dangerous Goods, Solid Cargoes and Containers (DSC) of the International Maritime Organization (IMO) which is scheduled for February 5–9, 1996, at the IMO Headquarters in London. The DSC Subcommittee was formed by combining the Subcommittee on the Carriage of Dangerous Goods (CDG) and the Subcommittee on Containers and Cargoes (BC).

The agenda items of particular interest are:

a. Harmonization of the International Maritime Dangerous Goods (IMDG) Code with the UN Recommendations on the Transport of Dangerous Goods.

b. Amendment 28–96 of the IMDG Code.

c. Implementation of the IMDG Code.

d. Development of new glossary and illustrations of packagings for Annex I to the IMDG Code.

e. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

f. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover marine pollution aspects.

g. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

h. Evaluation of properties of solid bulk cargoes.

i. Amendments to the Code of Safe Practice for Solid Bulk Cargoes (BC Code).

j. Loading and unloading of bulk cargoes.

k. Development of measures complementary to the Irradiated Nuclear Fuel (INF) Code.

l. Stowage and securing of cargoes on offshore supply vessels.

m. Entry into enclosed spaces.

n. Amendments to SOLAS chapters VI and VII.

o. Guidelines for the development of shipboard emergency plans for marine pollutants.

p. Water level alarms in cargo holds.

q. Cargo securing manual.

r. Revision of the Recommendations on the Safe Use of Pesticides in Ships.

s. Offshore tank containers.

t. Ships' stores of a hazardous nature.

u. Review of open-top containership provisional requirements.

v. Risk analysis of on-deck stowage of dangerous goods and marine pollutants and recommendations for the revision of relevant IMDG Code stowage provisions.

w. Revision of the format of the IMDG Code.

x. Review of reporting requirements in IMO instruments.

y. Relations with other organizations.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K. S. Cook, U.S. Coast Guard (G–MOS–3), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 15, 1995.

Richard T. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 96–556 Filed 1–18–96; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 2315]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct a special open meeting at 10 a.m., on Thursday, January 25, 1996, in Room 6319 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to seek public comment in preparation for an upcoming diplomatic conference that will consider the draft texts of both an International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and a Protocol to amend the International Convention on Limitation of Liability for Maritime Claims (76 LLMC). The diplomatic conference will be held in London, at the Headquarters of the International Maritime Organization (IMO), from April 15 until May 3, 1996.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first item addressed will be a presentation on the basic structure, framework, and legal principles of the draft HNS Convention. Comments will be sought at this time regarding the substance of the draft HNS Convention to assist the United States delegation in developing negotiating positions for the diplomatic conference.

At approximately 11 a.m., there will be a presentation on the major revisions to the 76 LLMC that would be brought about by the draft Protocol. Comments will be sought at this time regarding the substance of the draft Protocol to assist the United States delegation in developing negotiating positions for the diplomatic conference.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Commander Steven D. Poulin, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: December 18, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–557 Filed 1–18–96; 8:45 am]

BILLING CODE 4710–07–M

SURFACE TRANSPORTATION BOARD

[Docket No. AB–55 (Sub-No. 520X)] [1]

CSX Transportation, Inc.—Abandonment Exemption—Chatham County, GA

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.69 miles rail line between milepost SHB–511.66 and SHB–512.35 in North Savannah, Hutchinson Island, Chatham County, GA.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on February 17, 1996, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by January 29, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 7, 1996. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Ave, NW., Washington, DC 20423. In addition, one copy must be served on Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Board's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 23, 1996. A copy of the EA may be obtained by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–552 Filed 1–18–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The proceeding was originally instituted by the Interstate Commerce Commission (ICC). The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was signed into law by President Clinton on December 29, 1995, took effect on January 1, 1996, and abolished the ICC and transferred certain functions and pending proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings transferred from the ICC to the Board shall be decided under the law in effect prior to January 1, 1996. All statutory references in this notice will be to the former Interstate Commerce Act (ICA) provisions. The statutory provisions at 49 U.S.C. 10903–04 of the prior ICA were reenacted as 49 U.S.C. 10903 and responsibility for administering them is assigned to the Board.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Antidrug Program for Personnel Engaged in Specific Aviation Activities

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; correction.

SUMMARY: On December 19, 1995, the Federal Aviation Administration published a notice of the minimum annual random drug testing rate for 1996. That notice contained two errors, which are corrected by this document.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION: On December 19, 1995, the Federal Aviation Administration published a notice of the minimum annual random drug testing rate for 1996 (FR Document 95–30773). That notice contained two errors, which are corrected as follows:

1. On page 65376, in the first column, in the first paragraph under the heading Administrator's Determination of 1996 Random Drug Testing Rate, the second sentence, which is in parentheses, is corrected to read as follows: ''(The term 'positive rate' for tests required under 14 CFR part 121, Appendix I, means the number of positive results for random drug tests plus the number of refusals to take random tests, divided by the total number of random drug tests plus the number of refusals to take random tests.)''

2. On pages 65376, in the first column, in the first paragraph under the heading Administrator's Determination of 1996 Random Drug Testing Rate, in the nineteenth line of the paragraph, the word ''of'' at the end of the line is corrected to read ''for''.

Issued in Washington, DC on January 5, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 96–440 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–45]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final dispositions.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 8, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.)

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on January 16, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28433.

Petitioner: PremAir.

Sections of the FAR Affected: 14 CFR 119.2(b).

Description of Relief Sought: To allow PremAir to complete its certification process under part 135, with the provision that it will transition to parts 119 and 121 on the same schedule and under the same conditions as other commuter operators.

[FR Doc. 95–592 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–46]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 8, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No._____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 16, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26533.

Petitioner: Parachute Laboratories, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought: To extend and amend Exemption No. 5448, as amended, which allows Parachute Laboratories, Inc., d.b.a. as Jump Shack to allow its respective employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make intentional tandem parachute jumps, and permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual pack parachute, having at least one main parachute and one approved auxiliary (reserve) parachute packet in accordance with § 105.43(a). The amendment, if granted, would delete certain conditions and limitations from your current exemption.

Dispositions of Petitions

Docket No.: 18114.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.547(c) and 121.583(a).

Description of Relief Sought/ Disposition: To extend, for 3 years, Exemption No. 2600, as amended, which permits the Federal Express Corporation to carry a reporter, photographer, or journalist aboard its Boeing 747 and McDonnell Douglas DC–8 aircraft without complying with certain passenger-carrying requirements of part 121. A 6-year extension has been granted because operations under this exemption have been conducted safely for 17 years. *Grant, November 22, 1995, Exemption No. 2600J.*

Docket No.: 25210.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 63.39(b) (1) and (2) and 121.425(a)(2) (i) and (ii).

Description of Relief Sought/ Disposition: To extend Exemption No. 4901, as amended, which permits part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane pre-flight inspection using advanced pictorial means instead of the airplane. The exemption also permits part 121 certificate holders and operators of part 63 flight engineer school to complete training and checking of flight engineer applicants in an appropriate simulator instead of taking the portion of the practical test in an airplane in flight. *Grant, December 4, 1995, Exemption No. 4901D.*

Docket No.: 26029.

Petitioner: ABX Air, Inc., d.b.a. Airborne Express, Inc.

Sections of the FAR Affected: 14 CFR 121.503(b), 121.505(a), and 121.511(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5167, as amended, which permits Airborne Express pilots and flight engineers to complete certain transcontinental flight schedules before being provided with at least 16 hours of rest. *Grant, November 28, 1995, Exemption No. 5167C.*

Docket No.: 26101.

Petitioner: America West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 93.123.

Description of Relief Sought/ Disposition: To extend Exemption No. 5133, as amended, which authorizes America West, Inc., to operate four flights (two arrivals and two departures) at Washington National Airport. *Grant, November 29, 1995, Exemption No. 5133G.*

Docket No.: 26936.

Petitioner: Woods Air Fuel, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a).

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5984, as amended, which permits Woods Air Fuel, Inc., to operate its DC–6A (Serial No. 43522 and Registration No. N861TA) without complying with the zero fuel and landing weight requirements of the operating limitations prescribed for the aircraft in the FAA-approved manual. The amendment permits the operation of an additional DC–6 aircraft (Serial No. 45321 and Registration No. N28CA) under the authority of this exemption. *Grant, December 4, 1995, Exemption No. 5984A.*

Docket No.: 27223.

Petitioner: Ralph J. Diana.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65(c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A to part 61.

Description of Relief Sought/ Disposition: To permit Mr. Diana to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 22, 1995, Exemption No. 6191.*

Docket No.: 23336.

Petitioner: Simulator Training, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65(c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A to part 61.

Description of Relief Sought/ Disposition: To extend Exemption No. 5232, as amended, which permits Simulator Training, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 29, 1995, Exemption No. 5232D.*

Docket No.: 27362.

Petitioner: Ventura Air Services, Inc.

Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(a) (1) and (6) and (b) (6) and (7).

Description of Relief Sought/ Disposition: To extend Exemption No. 5792, which permits Ventura Air Services, Inc., to operate its turbojet airplanes in extended overwater operations equipped with one high-frequency communication and one long-range navigation system (LRNS). *Grant, November 28, 1995, Exemption No. 5792A.*

Docket No.: 27929.

Petitioner: Airline Training Center Arizona, Inc.

Sections of the FAR Affected: 14 CFR 61.93.

Description of Relief Sought/ Disposition: To permit Airline Training Center Arizona, Inc., student pilots to operate aircraft to practice solo airwork within 50 nautical miles of Phoenix-Goodyear Airport prior to receiving the instruction required by § 61.93(c)(1) (i), (ii), and (iii) and (c)(2)(iii). *Grant, November 24, 1995, Exemption No. 6227.*

Docket No.: 28170.

Petitioner: Simulator Training, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b), (c), and (d); and appendix H to part 121.

Description of Relief Sought/ Disposition: To permit Simulator Training, Inc., (STI), without holding an air carrier operating certificate, to train a part 121 certificate holder's pilots and flight engineers (FE) in initial, transition, upgrade, differences, and recurrent training in approved simulators and in airplanes, without STI's instructor pilots meeting all the applicable requirements of appendix H to part 121, and subpart N of part 121. *Partial Grant, November 28, 1995, Exemption No. 6245.*

Docket No.: 28259.

Petitioner: Freedom Air.

Sections of the FAR Affected: 14 CFR 135.180.

Description of Relief Sought/ Disposition: To allow Aviation Services, Inc., d.b.a. Freedom Air to operate its Short Brothers SD3–30 aircraft, which is configured with passenger seats, without an approved traffic alert and collision avoidance system (TCAS) within the U.S. airspace surrounding Guam and the Mariana Islands. *Denial, November 22, 1995, Exemption No. 6230.*

Docket No.: 28289.

Petitioner: Carver Aero, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Carver Aero, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft (Registration No. N561CA) operating under the provisions of part 135. *Grant, November 22, 1995, Exemption No. 6229.*

Docket No.: 28346.

Petitioner: Kutztown Airport.

Sections of the FAR Affected: 14 CFR 141.27(c)(2).

Description of Relief Sought/ Disposition: To permit Kutztown Airport to reapply for a provisional pilot school certificate in less than 180 days after the November 30, 1995, expiration of its certificate. *Grant, November 28, 1995, Exemption No. 6246.*

Docket No.: 28380.

Petitioner: United Parcel Service.

Sections of the FAR Affected: 14 CFR 25.791, 25.810, 25.812, 25.857(e), and 25.1447(c)(1).

Description of Relief Sought/ Disposition: To permit a one-time carriage of up to five more supernumeraries on the upper deck of a Boeing Model 747–100 cargo aircraft than the maximum of five currently allowed by Exemption No. 1870D, and to permit supernumerary access of the main deck cargo compartment, during cruise only, to attend to the needs of a live whale cargo only from Mexico City to Oregon. *Partial Grant, December 6, 1995, Exemption No. 6247.*

[FR Doc. 96–594 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting to be held February 5–6, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of Minutes of the Previous Meeting; (4) Report of Working Group Activities: a. Operations Working Group; b. Requirements Working Group; c. Enhancements Working Group; (5) Report on SC–186 Activities (Rocky Stone, UA); (6) Report on FAA TCAS Program Activities: a. TCAS I; b. TCAS II; c. TCAS IV; d. ATC Applications Activities (Ken Peppard, FAA); (7) Review and Update of Verification and Validation Process; (8) Review of Action Items from Last Meeting: a. Review Revised TOR for the Operations Working Group; b. FAA Presentation Concerning Requirements for Manufacturers; c. Report on SC–147 Letter to FAA Concerning Requirements; d. Report on Request to Form a New Group to Address Mode-S Transponder Issues; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on January 11, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–596 Filed 1–18–96; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held February 12–14, 1996, starting at 9:30 a.m. on February 12. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Introductory Remarks; (2) Review and Approval of the Agenda; (3) Monday, February 12: Work Group 2, VHF Data Radio Signal-in-Space MASPS, and continue refinement of upper layers; (4) Tuesday, February 13: Work Group 3, Review input to ''straw-draft'' of the VHF digital radio MOPS document program; (5) Wednesday, February 14: Plenary Session Convenes at 9:00 a.m.; (6) Approve the Summary of the Previous Meeting; (7) Reports from Working Groups 2 and 3; (8) Reports on ICAO AMCP, CSMA Validation, and FAA Vocoder Activity; (9) Address Future Work; (10) Other Business; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on January 11, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–598 Filed 1–18–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent to Rule on Application (#96–02–C–00–PUB) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pueblo Memorial Airport, Submitted by Pueblo Memorial Airport, Pueblo, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pueblo Memorial Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James

Elwood, A.A.E., Director of Aviation at the following address: Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, CO 81001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Pueblo Memorial Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–C–00–PUB) to impose and use PFC revenue at Pueblo Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 10, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pueblo Memorial Airport, Pueblo, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 13, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 1999

Proposed charge expiration date: January 31, 2010

Total estimated PFC revenues: $250,343.00

Brief description of proposed project: Airport planning studies; Rehabilitate Taxiway ''A''; Extend Taxiway ''K'' (Phases 1 and 2).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pueblo Memorial Airport.

Issued in Renton, Washington on January 10, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–597 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration and Federal Railroad Administration

Environmental Impact Statement: Portland, Oregon to Vancouver, British Columbia

AGENCY: Federal Highway Administration (FHWA), and Federal Railroad Administration (FRA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA and the FRA are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed high speed rail improvement program between Portland, Oregon and Vancouver, British Columbia.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–2120; Mark Yachmetz, Federal Railroad Administration, 400 7th Street SW., Room 5420, Washington, DC 20590, Telephone: (202) 366–0686; Mr. James Slakey, Washington State Department of Transportation, 310 Maple Park East Olympia, Washington 98504, Telephone: (360) 705–7920.

SUPPLEMENTARY INFORMATION: On October 22, 1992, the U.S. Department of Transportation designated the existing rail corridor from Eugene, Oregon through Portland, Oregon and Seattle, Washington to Vancouver, British Columbia, Canada as a high-speed rail corridor pursuant to Section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The Washington State Department of Transportation (WSDOT) proposes to adopt a multi-phase program plan to develop high-speed intercity passenger service on the 366-mile segment of that corridor between Portland, Oregon and Vancouver, British Columbia, and to undertake specific improvements consistent with such a plan. FHWA and FRA, in cooperation with WSDOT, will prepare an EIS on WSDOT's proposal.

The purpose of this EIS is to provide background for the decision whether or not to implement high-speed passenger rail service on the corridor. The EIS will also provide background for decisions related to possible future investment in passenger rail service related facilities in the corridor including identification of design levels of service (e.g. number, frequency, and speed of trains) and capital improvements needed to meet design levels of service.

The existing rail facilities limit the addition of high speed passenger trains within the Pacific Northwest Passenger Rail Corridor. Passenger rail speeds are limited in the existing corridor by the steep and curvy topography of western Washington and the limited capacity of the existing rail line would create conflicts between slower freight trains and higher speed passenger trains that would adversely affect passenger and freight train scheduling. High speed passenger rail in the corridor would require additional or improved rail geometrics, trackage, side or passing tracks, and signal and train control systems. The proposed improvement program would resolve the existing constraints on dependable and timely passenger rail service between Portland, Oregon and Vancouver, British Columbia.

Agency and public involvement programs will describe the proposed action and solicit comment from citizens, organizations, and federal, state, and local agencies. Comments and questions will be solicited and accepted via telephone, internet, public meetings, and the mail. In addition, targeted direct mail, advertisements, and media relations efforts will be used to reach the public and agencies. Advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published prior to circulation of the draft environmental impact statement. Public notice of actions related to the proposal that identify the date, time, place of meetings, and the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed improvement program and its reasonable alternatives are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or FRA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: January 8, 1996.

Gene K. Fong,

Division Administrator, Federal Highway Administration, Washington Division.

Mark E. Yachmetz,

Chief, Passenger Programs Division, Federal Railroad Administration.

[FR Doc. 96–468 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. PDA–14(R)]

Application by National Tank Truck Carriers, Inc., for a Preemption Determination as to Hazardous Materials Requirements Imposed by the City of El Paso, Texas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Tank Truck Carriers, Inc. (NTTC) has applied for an administrative determination as to whether the Federal hazardous material transportation law preempts certain provisions of Chapter 9.56 of the City of El Paso, Texas Municipal Code requiring motor carriers or operators that transport hazardous materials to obtain a permit based on inspections which are conducted only during limited time periods, from November 1 through December 31 of each year.

DATES: Comments received on or before March 4, 1996, and rebuttal comments received on or before April 18, 1996, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised in comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. [202] 366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–14(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must be sent to: (1) Mr. Clifford J. Harvison, President, National Tank Truck Carriers, Inc., 2200 Mill Road, Alexandria, VA 22314; and (2) Mr. David Caylor, City Attorney, City of El Paso, #2 Civic Center Plaza, Ninth Floor, El Paso, TX 79901. A certification that a copy has been sent to each person must also be included with each comment. (The following format is suggested: ''I hereby certify that copies of this comment have been sent to Messrs. Harvison and Caylor at the addresses specified in the Federal Register.'')

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001 (Tel. No. [202] 366–4400).

SUPPLEMENTARY INFORMATION:

I. NTTC'S Application for a Preemption Determination

On December 10, 1995, NTTC applied for a determination that the Federal hazardous material transportation law preempts certain provisions of Chapter 9.56 of the City of El Paso, Texas Municipal Code requiring motor carriers or operators transporting hazardous materials to obtain permits based on inspections conducted only during limited periods of time, from November 1 through December 31 of each year.

Section 9.56.080 of the City of El Paso Municipal Code states:

(a) It is unlawful for any motor carrier or operator to transport hazardous materials from a point of origin within the city or to a point of destination within the city without a permit issued by the Fire Marshal, or his designee.

(b) The annual inspection period shall be from November 1 through December 31 of each year.

(c) A permit fee of Fifty Dollars ($50.00) per vehicle shall be paid upon inspection of the vehicle. Vehicles failing inspection shall be assessed an additional Twenty-Five Dollars ($25.00) fee for reinspection.

(d) No permit issued under this Chapter shall be transferable from one person to another nor from one vehicle to another. The permit shall be visibly posted in each vehicle.

The text of NTTC's application is set forth in Appendix A. The attachments to the application, consisting of a copy of the ordinance adopting a new Chapter 9.56 of the El Paso Municipal Code and an El Paso Fire Department letter confirming active enforcement of the ordinance, may be examined at RSPA's Dockets Unit. Copies of the attachments will be provided at no cost, upon request to RSPA's Dockets Unit (see the address and telephone number set forth in the **ADDRESSES** section above.)

II. Preemption Under the Federal Hazardous Material Transportation Law

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' Pub. L. 93–633 § 102, 88 Stat. 2156, amended by Pub. L. 103–272 and codified as revised in 49 U.S.C. 5101. A key aspect of HMTA is that it replaced a patchwork of State and local laws. On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified and enacted ''without substantive change'' by Public Law 103–272, 108 Stat. 745. The Federal hazardous material transportation law is now found in 49 U.S.C. Chapter 51.

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, the U.S. Court of Appeals for the Tenth Circuit found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Public Utilities Comm.* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

Following the 1990 amendments and the subsequent 1994 codification of the Federal law governing the transportation of hazardous material, in the absence of a waiver of preemption by the Department of Transportation (DOT) under 49 U.S.C. 5125(e), ''a requirement of a State, political subdivision of a State, or Indian tribe'' is explicitly preempted (unless it is authorized by another Federal law) if—

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

49 U.S.C. 5125(a). These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA consistently has applied since 1978.

In the 1990 amendments to the HMTA, Congress also confirmed that there is no room for deviations from

Federal requirements in certain key matters involving the transportation of hazardous material. Under the present codified statute, a non-Federal requirement ''about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter,'' is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption. Section 5125(b)(1) lists these five ''covered subjects'' as:

(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 related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

RSPA has defined ''substantively the same'' to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).

Under 49 U.S.C. 5125(d)(1), any person directly affected by a requirement may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the Federal hazardous material transportation law. Notice of an application for a preemption determination must be published in the Federal Register, and the applicant is precluded from seeking judicial relief on the ''same or substantially the same issue'' of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. Following the receipt and consideration of written comments, RSPA publishes its determination in the Federal Register. See 49 C.F.R. 107.209(d). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 U.S.C. 5125((f).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing, which have been delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211. Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. Any person aggrieved by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 5125(f). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled ''Federalism'' (52 FR 41685 [Oct. 30, 1987]). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains 10 an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express provisions, which RSPA has implemented through its regulations.

III. Public Comment

All comments should be limited to the issue of whether the cited provisions of Chapter 9.56 of the City of El Paso Municipal Code are preempted by the Federal hazardous material transportation law. Comments should specifically address the preemption criteria (''substantively the same,'' ''dual compliance,'' and ''obstacle'' tests described in Part II above) and whether the City of El Paso Municipal Code requirements are ''otherwise authorized by Federal law.''

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on January 11, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A—A Petition Seeking a ''Preemption Determination'' With Regard to Specified Laws and Ordinances of the City of El Paso, Texas. Filed by: National Tank Truck Carriers, Inc.

Before The Administrator:

National Tank Truck Carriers, Inc. (NTTC) is a trade association representing over 200 motor carriers specializing in the transportation of hazardous materials, hazardous substances and hazardous wastes in cargo tank motor vehicles. Typically, this association's membership operates vehicles over irregular routes throughout the continental United States.

Virtually all of the members of NTTC are involved in the ''common carrier'' transportation of commodities regulated as ''hazardous materials'' by the Administrator. Given the nature of ''common carriage'', individual members of this [association], having neither a domicile nor a terminal in El Paso, Texas, are (nonetheless) called upon to perform transportation services into, out of and through that City. Thus, the interests of this Association (and its individual members) are impacted.

Most recently, this association has become aware that the City of El Paso, Texas intends an active enforcement program relative to provisions of Chapter 9.56 of that city's ''Municipal Code'' (herein referred to, alternatively, as ''the Ordinance''). A copy of Chapter 9.56 (as forwarded to NTTC by the City Clerk's office of the City) is appended to this petition. Also attached is a copy of a letter from the City's Fire Department underscoring the intention of the City to conduct vehicle inspections, during a limited period of time. Presumably, the vehicular inspections are a prerequisite to obtaining a permit mandated by the Ordinance. We enclose this letter only to underscore the fact that active enforcement is contemplated by the City. The issue is not moot.

NTTC's Position

NTTC believes that substantial provisions of the City of El Paso's Chapter 9.56, as enforced, are preempted by the Hazardous Materials Transportation Uniform Safety Act (as amended) (''the Act''), and we ask that

following public notice and opportunity for comment the Administrator issue a formal determination of preemption. Specifically, NTTC believes that the El Paso regulation, as currently applied and enforced, would cause a motor carrier to violate 49 CFR 177.853(a).

A Brief Description of the Issue

On December 29, 1993, officials of the City of El Paso codified revisions of Chapter 9.56 of the city's Municipal Code. Certain provisions of the new Ordinance encompass ''findings'', various definitions, ''minimum safety requirements'', a routing scheme (including allowable circumstances for deviation), ''permits and fees'', ''violations and penalties'', etc. It would appear that the Ordinance is enforceable against any commercial vehicle laden with hazardous materials, regardless of configuration (e.g. cargo tank vs. van trailer, etc.). Moreover, via the Ordinance the city adopts certain portions of the Administrator's Hazardous Materials Regulations (HMR) as its own.

According to NTTC's interpretation of Chapter 9.56, virtually any transporter having cause to pick-up and/or deliver regulated quantities of any hazardous material (as defined within the HMR), at any time in a given year at any place in the City, would be required to present any and all vehicles used in such transportation at designated points within the city, between November 1 and December 31, each year, for inspection. We assume that the inspection would evaluate compliance with relevant Federal regulations. Presuming satisfactory completion of the inspection, the vehicle owner would pay a fee (for the inspection) and be issued a ''permit''. That permit would be valid for one year and must be ''visibly posted'' in the vehicle. Permits may not be transferred from vehicle to vehicle.

The permit is subject to revocation, suspension, modification or denial, and an appeal process is in place. The provisions of the 14 Ordinance are enforceable by designated city employees and the penalties for non-compliance are substantial.

Safety and Operational Considerations

From the standpoint of its impact on the tank truck industry, Chapter 9.56 is little more than a series of enforceable requirements rolled into one. Herein, NTTC will concentrate on two areas of concern; namely, the ''permit'' and the ''inspection''.

Historically, the Administrator has charged petitioners (in these disputes) to evaluate state and local restrictions in terms of the ''dual compliance test'' and/or the ''obstacle test''.

Standing alone, neither the inspection program nor the permit scheme invite review. Certainly, NTTC would not question the efficacy of safety inspections conducted by trained personnel and aimed at measuring compliance with Federal safety regulations. Similarly (and beginning with IR#2), the Administrator has held that a permit, per se, is not necessarily preempted.

In the case of the El Paso law, however, the inspection and the permit are linked, inexorably. One cannot obtain a permit without an inspection and one cannot have a vehicle inspected unless he/she presents that vehicle before city officials at specific points and within a very narrow time frame.

Argument

NTTC believes that the Administrator need not go beyond his findings and ruling in the matter of PD–4(R); Docket No. PDA–6(R) ''California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids; Decision on Petition for Reconsideration'' to justify a ruling that the El Paso Ordinance is (similarly) preempted.

Perhaps unknowingly, the City of El Paso has taken the preempted provisions of the California Vehicle Code and added a new and sharply limiting twist. California required an in-bound vehicle to remain in that state (whether loaded or empty) until a safety inspection had been performed. In the alternative, a carrier could ''pre-notify'' California officials of a shipment bound for its jurisdiction and ''schedule'' an inspection. El Paso, on the other hand, would not only replicate California's preempted ''waiting'' period, it would compound the felony by limiting inspection times to a time frame within November 1 and December 31.

As we noted in the California docket, ''the call and demand nature of common carriage means that management may be unaware that a given vehicle, dispatched from a given terminal at a given time, is destined for California.'' Obviously, the same holds true for El Paso.

Even if the City amends its current procedures for performing inspections and issuing permits such must only be done within constraints clearly outlined by the Administrator, to wit: (a jurisdiction) may not require an inspection as a condition of travelling on (that jurisdiction's) roads when the inspection cannot be conducted without delay because an inspector must come to the place of inspection from another location. (PD–4(R); Docket No. PDA–6(R); Decision on Petition for Reconsideration. Issued February 7, 1995).

We grant the fact that, in the case of El Paso's ordinance some circumstances differ from those explored in the California decision, but the burden is the same, to wit: the carrier is compelled to present its vehicle (whether laden or empty) for inspection at a specific place and within a narrow time frame. The net impact of the city's law replicates the opportunities (and actualities) for delay preempted in California.

Paraphrasing the Administrator's rationale in preempting the California regulations, we suggest that, ''. . .(El Paso) is free, and is encouraged, to conduct inspections of cargo tanks and portable tanks at POEs, other roadside inspection locations, and terminals. However, it may not require an inspection as a condition of travelling on (El Paso's) roads when the inspection cannot be conducted without (unnecessary) delay. . . .''

Additionally, and as noted by NTTC in other proceedings, should other state or local jurisdictions enact requirements replicating El Paso's the result would be chaotic. We foresee wandering parades of trucks, of all shapes and sizes, crossing the nation's landscape seeking safety inspections in the off-hand chance that sometime in the next 365 days they might required to pick up and/or deliver a load to one or more of the inspecting jurisdictions. We see the windshields of those trucks so plastered with ''permits'' that the driver's field of vision is through a ''paper tunnel''.

Frankly, we doubt that the City has any realistic idea of the tumult that would result from comprehensive enforcement of Chapter 9.56.

Summary

Chapter 9.56 of the El Paso Municipal Code imposes an inspection and permit scheme which, in substance and enforcement, replicates that of the State of California which was preempted by the Administrator. As such, it deserves (indeed, mandates) a similar fate.

(Note: A copy of this petition has been sent via first class mail to the Office of the City Clerk and the Office of the Mayor of El Paso, Texas).

Respectfully submitted:

Clifford J. Harvison,

President.

[FR Doc. 96–547 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–60–P

[Docket No. PS–132; Notice 3]

Risk Assessment Prioritization (RAP) Program, Cycle 1 Completion

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration (RSPA), through it's Office of Pipeline Safety (OPS) has just completed the first generation of the Risk Assessment Prioritization (RAP) program. The RAP program was developed to assist OPS in determining how to best apply federal resources to pipeline safety issues using a risk based approach. This public meeting is being held to discuss the RAP process, review the RAP results and outline recommendations for improving RAP for the next cycle.

DATES: The public meeting will be held on Thursday January 25, 1996. The meeting will begin at 9 a.m. and conclude at 3 p.m.

ADDRESSES: The public meeting will be held at the Embassy Suites, 7640 N.W. Tiffany Springs Parkway, Kansas City, Missouri 64154 in the Salon Room. The telephone number to the Embassy Suites is 816–891–7788.

Individuals not able to attend the public meeting can send comments and recommendations on the RAP program to the docket listed above. This docket will remain open for several months to ensure that all interested parties can comment. Send comments in duplicate to the Dockets Units, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 29590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Patrick J. Ramirez, (202) 366–9864 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docketed material.

SUPPLEMENTARY INFORMATION:

I. Background

OPS began the RAP process two years ago with the goal of gaining better control of its agenda. OPS believes that having a structured method of prioritizing resources based on risk will help it better address Congressional mandates, National Transportation Safety Board (NTSB) recommendations and National Association of Pipeline Safety Representatives (NAPSR) resolutions. OPS began the RAP model development by having several OPS meetings and one public meeting to solicit input and ideas on the model and its usage. In October 1993, OPS published the RAP model in the Federal Register (58 FR 51402, Oct. 1, 1993) along with a request for pipeline safety issues. The notice generated nearly 500 issues from the government, industry, states, public interests groups and the general public. OPS consolidated these 500 issues to 189 distinct issues and published a second Federal Register notice (60 FR 7620, Feb. 8, 1995) in February 1995 requesting solutions. This second notice generated 400 responses, again from a wide range of pipeline safety interests.

Each solution was evaluated and/or prioritized by three groups consisting of the OPS regional directors, NAPSR/National Association of Regulatory Utility Commissioners (NARUC) and OPS Technical Advisory Committee members. In addition to having a functioning risk model, OPS has a RAP database that holds all of the issues, solutions and prioritized ratings.

Government, industry and public representatives provided extensive input to the RAP process which resulted in the ranked solutions and recommendations that led to the action plan. The action plan represents a significant step for OPS as it continues applying risk based business methods.

II. OPS Risk Based Action Plan

The RAP results provide substantial validation for much of the FY–95 OPS agenda including the following areas, which will retain a high level of OPS attention during FY–96:

- One-Call Systems. OPS will continue efforts in support of passage of federal legislation applicable to all underground utilities and operators. In addition, OPS will work to promote industry training of employees responsible for one-call systems and increased awareness and training of excavators. OPS will also work, along with its State Representatives, to promote increased development and use of quick and effective administrative enforcement of penalties for one-call violations.
- Continue Rulemakings. OPS will continue the following rulemakings:
- Installation of check valves or remote-operated valves on liquid pipelines in all high risk areas to provide for rapid shutdown of failed pipeline segments.
- Requiring periodic smart pigging in transmission pipeline segments situated in high risk areas.
- Require qualification of pipeline personnel.

Through Regulatory Reinvention Initiatives (RRI), OPS will continue to identify ways of providing more flexibility within its regulations, and reduce or remove costly requirements with little or no risk-reduction benefits. RAP identified the following RRI areas where increased OPS attention is warranted:

- *Use of Industry Standards.* OPS will increase the use of industry standards within its regulations and will continue the trend of increased OPS participation on national consensus standard development committees. Specifically, OPS will increase its efforts in support of API committees addressing specification of pipeline toughness, and will examine for incorporation within its regulations API Standard 1117, Lowering In-Service Pipelines, and the API series of standards concerning corrosion protection for tanks.
- *Inspection procedures.* OPS will strengthen its inspection guidelines to properly evaluate the adequacy of cathodic protection design, installation and monitoring.
- *Drug and alcohol testing requirements.* OPS will reconsider current requirements and work to define the appropriate level of testing commensurate with the risks being addressed.
- *Requirements for clearing shorted casings.* OPS will develop more flexible guidance on the conditions and criteria for clearing shorted casings.
- *Plastic Pipe Technology.* OPS will review its regulations to ensure that they are consistent with current application of plastic pipe technology, especially in the areas of joints and tracer wire.

RAP outlined several technology advancement programs that OPS should continue addressing. The following broad-based efforts will include risk management programs and performance measures, pipeline mapping, research and technology, training and data development:

- *Risk Management Programs and Performance Measures.* OPS will continue to work closely with industry and other stakeholders to develop risk management programs that can demonstrate equal or greater levels of safety.
- *Mapping Initiatives.* OPS will continue its joint efforts with industry to obtain better information concerning the location of pipelines and their proximity to high risk population and environmental areas.
- *Research & Technology Development.* OPS will continue to promote the development of improved

and more cost-effective smart in-line inspection tools, leak detection systems, and line location technologies.

• *De-Centralized Training.* OPS will emphasize the use of computer-based training and other mechanisms to provide cost-effective training to state and regional inspectors.

• *Improve Usefulness of Incident Data.* OPS will work to improve the quality and usefulness of its incident database system, including facilitating collection of the data, making the data more widely available, improving on-line analytical capabilities, and developing ties to industry databases to support risk management demonstrations, which will include making the industry databases available to OPS and States.

OPS will strengthen its interagency cooperative activities through the following:

• *Regulatory Jurisdictional Authority.* OPS will increase efforts with the Coast Guard, the Environmental Protection Agency, the Minerals Management Service and others to clarify jurisdictions and authorities. Specifically, OPS will address jurisdictional issues on low stress lines pipelines and tanks.

• *Pipeline Casings.* OPS will work with the Federal Highway Administration and the Federal Railroad Administration to investigate the requirements for casings at highway and railroad crossings.

The RAP process included all current mandates from the National Transportation Safety Board (NTSB), National Association of Pipeline Safety Representatives (NAPSR), and certain provisions of the FY88 and FY92 Pipeline Safety Acts. While the RAP results indicate that several of the mandates may require significant cost to implement, they also offer the opportunity to provide appreciable risk reduction. OPS will take a risk based approach to the following initiatives, allowing operators opportunity to determine the circumstances and extent to which these safety actions should be applied to mitigate consequences of accidents.

• Require qualification of pipeline personnel.

• Require periodic smart pigging in transmission pipeline segments situated in high risk areas.

• Install check valves or remote-operated valves on gas and liquid pipelines in all high risk areas to provide for rapid shutdown of failed pipeline segments.

On the mandate to issue regulations requiring operators of natural gas distribution systems to notify their customers with lines in which excess flow valves (EFVs) are not required by law, but can be installed, OPS has thoroughly considered the issue and is taking steps to issue a rule requiring operators to notify customers about EFV availability and to offer to install EFVs if the customer pays for the installation. Additionally, OPS will be taking steps to develop performance standards for any EFV installed on a service line.

OPS will continue to develop and refine the RAP program through future cycles and will make the database available to State pipeline safety offices and other stakeholders upon request.

III. Public Meeting Topics

The public meeting will focus on the 5 following areas for discussions:

• Overview of the RAP process

• Overview of the RAP results (OPS Action Plan)

• How issues and solutions were gathered and consolidated

• Recommendations for the next cycle

• Introduction to the RAP database

Issues in Washington, DC on January 11, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–545 Filed 1–18–96; 8:45 am]

BILLING CODE 4910–60–P

Sunshine Act Meetings

Federal Register
Vol. 61, No. 13
Friday, January 19, 1996

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: January 25, 1996, 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: The Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Impact of the Shutdown on Civil Rights Enforcement and EEOC's Workload.
2. Interim Report to the Commission—Office of the General Counsel.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued January 16, 1996.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 96–705 Filed 1–17–96; 12:49 pm]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., January 25, 1996.

PLACE: Room 2C, Commission Meeting Room, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 94–06—*Financial Responsibility Requirements for Nonperformance of Transportation;* and Docket No. 94–21—*Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation*—Consideration of Comments.
2. Docket No. 94–31—*Information Form and Post-Effective Reporting Requirements for Agreements among Ocean Common Carriers Subject to the Shipping Act of 1984*—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 96–696 Filed 1–17–96; 2:48 pm]

BILLING CODE 6730–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, January 24, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 17, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–694 Filed 1–17–96; 10:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 24, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed modifications to the Fedwire third-party access policy regarding foreign service provider arrangements. (This item was originally announced for an open meeting on January 10, 1996.)
2. Any items carried forward from a previously announced meeting.

Discussion Agenda

Please Note That No Discussion Items Are Scheduled for This Meeting.

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 17, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–693 Filed 1–17–96; 10:45 am]

BILLING CODE 6210–01–P

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:30 p.m. Tuesday, December 12, 1995.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action).

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, D.C., December 12, 1995.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–742 Filed 1–17–96; 2:50 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 8, 15, 22, and 29, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 8

There are no meetings scheduled for the Week of January 8.

Week of January 15—Tentative

There are no meetings scheduled for the Week of January 15.

Week of January 22—Tentative

There are no meetings scheduled for the Week of January 22.

Week of January 29—Tentative

Tuesday, January 30

10:00 a.m.
Briefing by DOE on Status of High Level Waste Program (Public Meeting)

Tuesday, January 30

10:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)
2:00 p.m.
Discussion of Full Power Operating License for Watts Barr (Public Meeting)
(Contact: Fred Hebdon, 301–415–2024)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: January 5, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–673 Filed 1–17–96; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 15, 22, 29, and February 5, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 15

Tuesday, January 16

2:45 p.m.
Affirmation Session (Public Meeting)
a. Petition to Intervene in Proceeding to Approve Proposed Decommissioning Plan for Yankee Nuclear Power Station

Week of January 22—Tentative

There are no meetings scheduled for the Week of January 22.

Week of January 29—Tentative

Tuesday, January 30

10:00 a.m.
Briefing by DOE on Status of High Level Waste Program (Public Meeting)

Wednesday, January 31

10:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)
2:00 p.m.
Discussion of Full Power Operating License for Watts Barr (Public Meeting)
(Contact: Fred Hebdon, 301–415–2024)

Week of February 5—Tentative

Wednesday, February 7

10:00 a.m.
Briefing on System Reliability Studies (Public Meeting)
(Contact: Patrick Baranowsky, 301–415–7493)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: January 11, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–674 Filed 1–17–96; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Tuesday, January 30, 1996—9:00 a.m.-5:30 p.m.

LOCATION: U.S. Institute of Peace, 1550 M Street, Lobby Conference Room, Washington, DC 20005, (202) 457–1700.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January Board Meeting. Approval of Minutes of the Seventy-third Meeting of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Approval of Unsolicited Grant and Fellowship Applications; Selection of 1997 Essay Contest Topic; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 17, 1996.

Charles E. Nelson,

Vice President for Management and Administration, United States Institute of Peace.

[FR Doc. 96–766 Filed 1–19–96; 3:33 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 61, No. 13
Friday, January 19, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

Correction

In notice document 95–30742 appearing on page 65346 in the issue of Tuesday, December 19, 1995, make the following corrections:

On page 65346, in the second column, in the ADDRESSES section, in the second line, ''5th Street'' should read ''15th Street'' and in the third line, ''2005'' should read ''20005''.

BILLING CODE 1505–01–D

federal register

Friday
January 19, 1996

Part II

Environmental Protection Agency

40 CFR Part 76

Acid Rain Program; Nitrogen Oxides Emission Reduction Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–5400–2]

RIN 2060–AF48

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed rule would implement the second phase of the Nitrogen Oxides Reduction Provisions in Title IV of the Clean Air Act (''the Act'') by establishing nitrogen oxides (NO_X) emission limitations for certain coal-fired utility units and revising NO_X emission limitations for others as specified in section 407(b)(2) of the Act. The emission limitations will reduce the serious adverse effects of NO_X emissions on human health, visibility, ecosystems, and materials.

DATES: *Comments.* Comments must be received on or before March 4, 1996.

Public Hearing. A public hearing will be held in Washington, DC on February 8, 1996, beginning at 10:00 a.m. Persons interested in presenting oral testimony must contact Peter Tsirigotis at EPA's Acid Rain Division, telephone number (202) 233–9133, by February 2, 1996 to verify arrangements.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air Docket Section (A–131), Attention, Docket No. A–95–28, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. The public hearing will be held at the Environmental Protection Agency, 401 M Street, Washington D.C., in the Education Center Auditorium.

Docket. Docket No. A–95–28, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, at (202) 233–9133, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. RULE BACKGROUND AND SUMMARY
A. Benefits of Reducing NO_X Emissions
B. Cost-Effectiveness of this Regulatory Action
II. REVISION OF PHASE II, GROUP 1 BOILER NO_X PERFORMANCE STANDARDS
A. Statutory Provision
B. Methodology
C. Feasibility of Achieving Revised Phase I Performance Standards
D. Adverse Effects of NO_X and Benefits of Reduction
E. Revised Emission Limits for Group 1 Boilers
F. Compliance Date
G. Definition of Coal-Fired Utility Unit
III. CONTROL OF NO_X EMISSIONS FROM GROUP 2 BOILERS
A. Description of Group 2 Boilers
B. NO_X Control Technologies for Group 2 Boilers
C. Statutory Requirements
D. Methodology for Establishing Group 2 Emission Limitations
E. Characterization of Costs
F. Emission Limits for Group 2 Boilers
G. General Issues Raised
IV. REFERENCES
V. REGULATORY REQUIREMENTS
A. Executive Order 12291
B. Paperwork Reduction Act
C. Unfunded Mandates Act
D. Regulatory Flexibility Act
E. Miscellaneous

I. Rule Background and Summary

A. Benefits of Reducing NO_X Emissions

The primary purpose of the Acid Rain NO_X Emission Reduction Program is to reduce the multiple adverse effects of the oxides of nitrogen, a family of highly reactive gaseous compounds that contribute to air and water pollution, by substantially reducing annual emissions from coal-fired power plants. Since the passage of the 1970 Clean Air Act, NO_X has increased by about 7%; it is the only conventional air pollutant to show an increase nationwide.

Electric utilities are a major contributor to NO_X emissions nationwide: in 1980, they accounted for 30 percent of the total NO_X emissions and, from 1980 to 1990, their contribution rose to 32 percent of total NO_X emissions. Approximately 85 percent of electric utility NO_X comes from coal-fired plants.

The NO_X emissions discharged into the atmosphere from the burning of fossil fuels consist primarily of nitric oxide (NO). Much of the NO, however, reacts quickly to form nitrogen dioxide (NO_2) and, over longer periods of time, is transformed into other pollutants, including ozone and fine particles. These secondary pollutants are harmful to public health and the environment.

NO_2 and airborne nitrate also degrade visibility, and when they return to the earth through rain or snow (''wet deposition'') or as gases, fog, or particles (''dry deposition''), they contribute to excessive nitrogen loadings to estuaries (''eutrophication''), such as in the Chesapeake Bay, and acidification of lakes and streams.

NO_2 has been documented to cause eye irritation, either by itself or when oxidized photochemically into peroxyacetyl nitrate (PAN). Ozone (O_3), the most abundant of the photochemical oxidants, is a highly reactive chemical compound which can have serious adverse effects on human health, plants, animals, and materials. Fine particles at current ambient levels contribute to morbidity and mortality.

B. Cost-Effectiveness of this Regulatory Action

On April 13, 1995 EPA promulgated the Acid Rain NO_X rule setting emission limits for all Phase I and Phase II dry bottom wall-fired and tangentially fired boilers (Group 1) in the U.S. that combust coal as a primary fuel. The regulation is expected, by the year 2000, to nationally reduce NO_X emissions by an estimated 1.54 million tons per year. The total annual cost of this regulation to the electric utility industry is estimated at 321 million dollars, resulting in an overall cost-effectiveness of 208 dollars per ton of NO_X removed. The nationwide cost impact on electricity consumers is an average increase in electricity rates of approximately 0.21 percent (EPA's Regulatory Impact Analysis, docket item II–F–2).

The proposal would set lower Group 1 emission limits and establish emission limits for several other types of coal-fired boilers (i.e., cyclones, cell burners, wet bottoms, vertically fired, and fluidized bed combustors) for Phase II. The proposal would, by the year 2000, achieve an additional reduction of 820,000 tons of NO_X annually. The annual cost for these additional reductions would be approximately 143 million dollars, at an average cost-effectiveness of 172 dollars per ton of NO_X removed. The nationwide impact on electricity rates of this proposal is an average increase of approximately 0.07 percent, significantly lower than the impacts resulting from the April 13, 1995 rule (see EPA's Regulatory Impact Analysis, docket item II–F–2).

This rule, when promulgated, must meet statutory criteria which relate to cost and performance of existing installations of low NO_X burner technology (LNBT) and to estimates of cost and performance of future

installations of a variety of NO_X control technologies. At this time there remain significant uncertainties regarding this information and the best approaches for analyzing it. The information collected to date is incomplete. Resolving these issues is one of the purposes of soliciting public comments on this proposed rule. Information received in the course of this rulemaking may show that no change in the standard for tangentially fired and dry bottom wall-fired boilers may be appropriate and that no standard for cyclones may be justifiable under the statutory criteria.

II. Revision of Phase II, Group 1 Boiler NO_X Performance Standards

A. Statutory Provision

Section 407(b)(2) provides that:

> Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_X burner technology is available: Provided, That, no unit that is an affected unit pursuant to section 404 and that is subject to the requirements of [section 407] (b)(1), shall be subject to the revised emission limitations, if any. 42 U.S.C. 76516(b)(2).

Under this provision, the Administrator may revise the applicable NO_X emission limitations for Group 1 boilers to be more stringent if available data on the effectiveness of low NO_X burner technology shows that more stringent limitations can be achieved using such technology. Any revised emission limitations will apply only to Group 1 boilers that first become subject to NO_X emission limitations on or after January 1, 2000. Units with Group 1 boilers that are subject to both SO_2 and NO_X emission limitations in Phase I of the Acid Rain Program are entirely exempted from any revised emission limitations. ''Early-election units,'' i.e., units with Group 1 boilers that are not subject to SO_2 emission limitations until Phase II but that have voluntarily become subject to the NO_X emission limitations by January 1, 1997 and demonstrate compliance with these limitations throughout the rest of Phase I and during the period 2000–2007 are grandfathered from any revised limits until January 1, 2008, at which time any revisions will apply. 40 CFR 76.8.

Section II.B of the preamble summarizes the methodology the Agency has used to evaluate the effectiveness of low NO_X burner technology applied to Group 1 boilers. Preamble Section II.C provides estimates of the emission limitations (in lb/mmBtu) that a substantial majority of units subject to any revised emission limitations can be expected to achieve on an annual average basis. (The revised emission limitations will hereafter be referred to as ''the Phase II, Group 1'' or ''revised Group 1'' emission limitations.) As with units subject to the NO_X emission limitations in Phase I, the designated representative of a unit that is subject to the Phase II, Group 1 emission limitations and cannot meet the applicable emission limitation using low NO_X burner technology may seek to participate in a NO_X averaging plan with other units with the same owner or operator or may petition for a less stringent alternative emission limitation. The Technical Support Document, filed in Air Docket A–95–28 as item number II–A–9, contains a comprehensive description of the methodology and results of the Agency's evaluation of the effectiveness of Group 1 low NO_X burner technology.

Preamble Section II.D addresses the benefits of reducing NO_X emissions. Finally, Section II.E concludes, based on the performance of low NO_X burners (LNBs) on Group 1 boilers and the benefits and relative cost of reducing NO_X by revising the Group 1 emission limitations, that revised emission limitations should be adopted. Section II.F addresses the compliance date for meeting the revised limitations, an issue raised by the regulated utility industry.

B. Methodology

1. EPA's LNB Application Database

The Agency has developed a computerized database containing detailed information on the characteristics and emission rates of coal-fired units with Group 1 boilers on which low NO_X burners (LNBs) have been installed without any other NO_X controls. The Department of Energy (DOE) and Utility Air Regulatory Group (UARG), a major industry association representing utility owners and operators, have assisted EPA in identifying known applications of LNBs on Group 1 boilers.

EPA considered the option of including units on which LNBs have been installed in combination with separated overfire air or other NO_X controls. EPA rejected this approach primarily because, in many instances, the control technology vendor designed the combined system, not the LNB component alone, to achieve the emission performance standard. EPA also decided to exclude units on which LNBs were installed before November 15, 1990, the date of enactment of the Clean Air Act Amendments of 1990. Presumably, Congress was aware of such LNB installations when it set the emission limitations in section 407 (b)(1); but the task here is to determine whether those limitations should be revised because of the availability of more effective LNB, as reflected in the performance of subsequent LNB installations.

The second criterion EPA used in selecting units for evaluating the effectiveness of Group 1 LNB technology was the availability of post-retrofit hourly emission rate data, measured by continuous emission monitoring systems (CEMS), certified pursuant to 40 CFR part 75 (Acid Rain Continuous Emission Monitoring Rule.) The only source of such emission rate data has been the Acid Rain Emission Tracking System (ETS), a computerized information system containing the quarterly emissions reports submitted electronically by utilities under the Acid Rain Program. For Phase I units, ETS provided hourly CEMS data on NO_X emission rates for four quarters of 1994 and the first two quarters of 1995. In most instances, for Phase II units, ETS provided CEMS data for the first two quarters of 1995, only. EPA solicits comment on the appropriateness of using performance data collected by means other than CEMS operated pursuant to 40 CFR part 75.

Using these selection criteria, EPA has compiled a database of coal-fired units with Group 1 boilers, with LNB installations after November 15, 1990, and for which post-retrofit hourly CEMS emission rate data are available. This database presently consists of 24 dry bottom wall-fired boilers (22 Phase I units, 2 Phase II units) and 9 tangentially fired boilers (6 Phase I units, 3 Phase II units). This data set, called the ''EPA LNB Application Database,'' forms the technical basis for EPA's evaluation of the effectiveness (percent NO_X removal) of low NO_X burner technology for Group 1 boilers. EPA plans to continue this analysis as LNBs are installed on more Phase II units and as additional quarters of hourly CEMS data from ETS become available. Additional quarters of ETS CEMS data would be expected to increase the size of this data set considerably since they would include post-retrofit emission rate data for LNB installations performed during summer and fall, 1995.

The EPA LNB Application Database contains the following information for each boiler: nameplate capacity; firing type; pre-retrofit NO_X emission rate; source of pre-retrofit emission rate data; date of boiler shutdown for LNB installation; date boiler resumed normal operations after LNB installation, shakedown, and optimization; hourly

CEMS data from ETS for post-retrofit NO_X emission rates; and hourly data from ETS for boiler operating time and load. EPA contacted utilities to verify the date of boiler shutdown for LNB installation and the date the boiler resumed normal operations after post-retrofit optimization whenever these dates could not be readily ascertained from the hourly CEMS data and other information submitted by utilities to EPA. The Agency solicits comment on what other data would be necessary when assessing whether LNBs are operated in a low-NO_X mode during a certain time period (e.g., percent combustion air introduced through close-coupled overfire air ports in tangentially fired boiler LNB retrofits).

2. Determination of Achievable Annual Emission Limitations

Because the Acid Rain Phase I NO_X Emission Reduction Program goes into effect on January 1, 1996, units in the EPA LNB Application Database have not been required to meet the Phase I NO_X emission rate standards in either 1994 or 1995. For every LNB retrofit there is a period of time, immediately following the retrofit, during which operators learn to operate the new equipment safely and in accordance with the manufacturer's specifications. The operators then learn to optimize NO_X emissions reduction according to each utility's compliance strategy. Performance of LNBs before optimization likely overstates or understates the NO_X reduction achievable by the LNBs. Additionally, continued operation of LNBs to minimize NO_X emissions increases the operation and maintenance (O & M) costs of each LNB retrofit after optimization. Therefore, even though LNB controls are installed, the units may not be operated, throughout the entire post-retrofit period, to sustain the NO_X emission reductions the controls were designed to achieve since this would increase O & M costs when the NO_X reductions are not yet required.

As discussed in EPA's Regulatory Impact Analysis (RIA), plants incur both fixed and variable O & M costs when operating LNBs to lower NO_X emissions in order to meet the NO_X emission limits. The RIA assumes an annual maintenance cost increase of 1.5% of the installed capital cost of the LNB equipment for both dry bottom wall-fired and tangentially fired boilers and a variable cost of 0.04 mills/kWh for dry bottom wall-fired boilers. While the incremental O & M costs given in the RIA are estimated with respect to boiler O & M costs prior to the technology retrofit. The sources of these incremental costs (auxiliary fan power consumption, increased difficulty of maintaining steam temperatures over the load range at reduced excess air levels, higher maintenance demands), suggest that the absence of a requirement to limit NO_X emissions may result in operational changes and higher NO_X emissions. Thus, the average NO_X emission rate over the post-retrofit pre-compliance period may not be representative of achievable LNB performance under actual compliance conditions. On the other hand, it is reasonable to expect that utilities operated their newly installed NO_X controls for some period of time following optimization of the equipment to simulate compliance conditions, perhaps as a dry run or for training purposes. It is intuitive that NO_X reduction techniques which, by their nature, create potentially damaging chemical environments inside boilers and reduce overall plant efficiency when pushed to the highest levels of NO_X reduction performance, could be tested for several weeks at levels which are not sustainable for longer periods of time. According to certain utilities, there is anecdotal evidence that initial performance levels for LNBs cannot be maintained indefinitely on some boilers.[1,2]

In publications and in past rulemakings, DOE and industry have addressed what time period is sufficient for determining an achievable emission limit for a NO_X control technology over the long-term. For example industry has stated ''that acceptable results [of long-term performance] can be achieved with data sets of at least 51 days with each day containing at least 18 valid hourly averages'' (see docket items II–I–99, Advanced Tangentially-Fired Combustion Techniques for the Reduction of Nitrogen Oxide (NO_X) Emissions from Coal-Fired Boilers; and II–I–100, Demonstration of Advanced Wall-Fired Combustion Modifications for the Reduction of Nitrogen Oxide (NO_X) Emissions from Coal-Fired Boilers).

EPA has adopted the 52-day framework for evaluating the effectiveness of Group 1 LNB technology. The first objective was to identify the lowest average NO_X emission rate each boiler has sustained for at least 52 days, i.e., over a period of 1248 hours during the post-retrofit period when the boiler was operating and valid CEMS data was available. (Such a 1248 hour operating period is generally longer than 52 calendar days since hours during which the boiler did not operate, or operated for only part of the hour are ignored, as are hours for which valid CEM data was not available.) This period, referred to as the ''low NO_X period,'' is assumed to simulate boiler operations under compliance conditions. The next objective was to determine whether the distribution of operating conditions (e.g., load and excess air) during the low NO_X period is representative of actual boiler operating conditions throughout a year. For each boiler in the database, EPA has developed histograms of hourly average NO_X emission rates as a function of load for the low NO_X period and boiler operating load patterns throughout 1994 (see docket item II–A–9). If the operating conditions in the low NO_X period are representative, EPA assumes the boiler can achieve an annual average NO_X emission rate equal to the average emission rate recorded for the period. EPA used these histograms to estimate ''load weighted annual NO_X emission rates'' based on weighted averages of the average emission rate during the low NO_X period for each operating load level (or ''load bin'') times the number of hours during 1994 the boiler operated within each load bin.

Some utility commenters have expressed the concern that by not using all the recorded post-retrofit CEM data EPA is not accurately assessing the long-term performance capabilities of LNBs. These commenters believe that all CEM data collected after a fixed shakedown period (30 to 90 days) for equipment optimization and operator training, which is applied universally to all installations, should be used for this assessment. To address this concern, EPA analyzed the CEM data for 2 time periods: (1) a time period that would begin 30 days after LNB installation and include all the post-retrofit data, referred to as the ''post-retrofit period,'' and (2) a time period beginning with the first day of the low NO_X period and continuing beyond 52 days to include all available CEM data throughout the

[1] It was reported that three tangentially fired boilers at Duke Power Company's Allen plant could not maintain design efficiency at full load, while meeting the existing standard of 0.45 $lbNO_X$/mmBtu. Plant engineers are currently attemping to resolve the problem with a slagging additive. E-mail communication from Robert McMurray, Duke Power, to Doug Carter, USDOE, 11/7/95.

[2] Southern Company reports that two of its Georgia Power Company, McDonough plant tangentially fired units cannot meet their NO_X performance and plant performance guarantees at the same time. Telecommunication between Rob Hardman, Southern Company Services, and Doug Carter, USDOE, 11/3/95.

[3] Based on CREV data taken from EPA's database of uncontrolled NO_X emissions, presented in Appendix A of RIA.

entire post-retrofit period, referred to as the ''post-optimization period.''

One of the primary advantages of using the low NO_X period or the post-optimization period, as defined above, for assessing performance capabilities of LNBs applied to Group 1 boilers is that they explicitly recognize the site-specific nature of the LNB equipment optimization and operator training processes. For some units, both the shakedown of the technology retrofit and operator training proceed smoothly and can be completed within 30 or 60 calendar days. Whereas for other units, particularly units combusting a range of coals and or cycling through load pattern shifts, these processes can take much longer. EPA finds that for dry bottom wall-fired boilers in the database, the beginning of the low NO_X period generally occurs between 2 and 5 months after completion of the LNB retrofit. Not as much variation is seen among the tangentially fired boilers, although only 3 such boilers in the database have more than one quarter of post-retrofit CEM data available.

Utility commenters have also expressed the concern that NO_X emission rate data taken before the Phase I compliance period for Acid Rain SO_2 emission limitations, which began January 1, 1995, may not represent ''normal operating conditions.'' Specifically, in some instances, 1994 Phase I data may not represent the current range of coal quality characteristics being combusted by affected boilers. LNB installations and vendor guarantees are typically tied to operating within a specific range of coals. Moreover, EPA has learned of at least two Phase I boilers which experienced significant increases in NO_X emissions when switching to coal for SO_2 compliance purposes. Other units at the Joppa steam plant, for example, experienced significantly lower NO_X emissions, after switching from eastern bituminous to Powder River Basin coal. These units were dropped from the database for the purposes of assessing LNB performance because the measured percent reduction in NO_X emissions reflects the combined effects of the control technology retrofit and the switch to a more reactive subbituminous coal.

To address these concerns, for each boiler in the database where the 52-day low NO_X period began in 1994, EPA has identified a 52-day low NO_X period for 1995 and compared the average NO_X emission rates for the two periods (see docket item II–A–9). Where these analyses show a noticeable change occurred in NO_X emissions after the beginning of the Phase I SO_2 compliance period, EPA intends to investigate whether switching to low sulfur coal for SO_2 control or whether other operational parameters might explain the difference in LNB performance. Further, EPA solicits comments from the utilities documenting the specific circumstances where the characteristics of coal quality and operating parameters have impacted NO_X emissions.

Also in the Group 1 technical support document (docket item II–A–9), EPA has developed and compared average NO_X emissions rates for the following: low NO_X period, low NO_X period in 1995, post-optimization period, overall post-retrofit period, and the load-weighted annual average NO_X emission rate. The document contains statistical tests of significance on the absolute values of the differences between these alternative ways of estimating the average achievable NO_X emission rate over the long-term. The next section of the preamble summarizes and discusses these comparisons.

EPA has used two complementary analyses to estimate annual average emission rates that can be sustained by LNBs installed on Phase II units with Group 1 boilers and to develop percentile distributions of Phase II units that can comply with various performance standards more stringent than the Phase I standards. The two analyses are described briefly below:

(1) Analysis 1 analyzes actual average emission rates, as measured by CEMS data, achieved by LNBs applied to Phase I units in Phase I and a few Phase II units to calculate the percent reduction achievable by LNBs as a function of uncontrolled emission rate; and

(2) Analysis 2 applies the percent NO_X reduction derived in Analysis 1 to boiler-specific uncontrolled emission rates for the population of units that will be subject to any revised NO_X emission limitations in Phase II in order to determine achievable emission rates for the Phase II, Group 1 population.

The straightforwardness of the retrofit CEMS data analysis (Analysis 1) is appealing in that it reflects actual boiler operating experience. On the other hand, to the extent the Phase I population of boilers is more difficult to retrofit and has higher baseline emission rates and a greater proportion of tight, high furnace temperature boilers than the Phase II population, emission rates based solely on the retrofit CEMS data analysis will understate the achievable annual emission limitations. Analysis 2, which uses a regression model applied to the CEMS data to estimate the percent reduction as a function of uncontrolled emission rates, captures differences in the two populations of boilers.

Utilities complying with Group 1, Phase I reductions for tangentially fired boilers had a spectrum of technologies to choose from in addition to LNBs and some, perhaps due to other NO_X requirements such as title I of the Act, chose to go beyond LNBs in their technology choice. As a result, DOE believes there is the possibility that those units installing LNB were in some way different from tangentially fired boilers in general and, therefore, existing LNB installations may not be representative of how well LNBs will perform on Phase II tangentially fired boilers. EPA seeks comment regarding the representativeness of LNB installations.

Similarly, EPA is aware of no tangentially fired boiler with uncontrolled NO_X emissions exceeding 0.67 lb/mmBtu, which has been retrofit with LNB. DOE believes that about one-fourth of the Phase II tangentially fired boiler capacity exceeds this level of uncontrolled emissions. EPA seeks comment on the ability of LNBs to meet the proposed standards on boilers with uncontrolled NO_X emissions exceeding 0.67 lb/mmBtu, and requests any additional data which relates to this issue.

C. Feasibility of Achieving Revised Phase I Performance Standards

1. Assessment Using Retrofit CEMS Data Analysis

Table 1 presents summary statistics on all known retrofit applications of LNBs to Group 1 boilers, where LNB installation occurred after November 15, 1990 and for which long-term post-retrofit hourly CEMS emission rate data are available. The term ''baseline NO_X rate'' refers to the emission rate as of November 15, 1990 and represents short-term uncontrolled NO_X emissions.

TABLE 1.—SUMMARY OF THE KNOWN LNB APPLICATIONS ON GROUP 1 BOILERS WITH CEMS DATA AVAILABLE

	No. of units	Boiler size (MWe)	Baseline NO_X rate (lb/mmBtu)	Low NO_X period NO_X rate (lb/mmBtu)
Wall-Fired Boilers				
Phase I:				
Mean	22	270.6	0.908	0.418
Range	22	100.0–816.3	0.570–1.340	0.319–0.484
Phase II:				
Mean	2	267.4	0.757	0.354
Range	2	254.3–280.5	0.513–1.000	0.262–0.445
Phase I & II:				
Mean	24	270.3	0.896	0.413
Range	24	100.0–816.3	0.513–1.340	0.262–0.484
Tangentially Fired Boilers				
Phase I:				
Mean	6	230.3	0.653	0.365
Range	6	125.0–324.0	0.630–0.665	0.346–0.387
Phase II:.				
Mean	3	80.5	0.514	0.325
		80.0–81.6	0.478–0.587	0.304–0.363
Phase I & II:				
Mean	9	180.4	0.607	0.352
Range	9	80.0–324.0	0.478–0.665	0.304–0.387

Tables 2 and 3 present detailed data on the 24 dry bottom wall-fired LNB installations and the 9 tangentially fired LNB installations, respectively. Table 2 does not include data for LNB installations that occurred before the cutoff date of November 15, 1990 since these installations occurred prior to the passage of the Act. Table 3 does not include installations at the Joppa Steam plant (owned by Electric Energy Inc.) since these units switched to Powder River Basin coal, nor does it include installations at Lansing Smith, unit 2, (owned by Gulf Power Co.) and Albright, unit 3 (owned by Monongahela Power Co.) since EPA is unsure when during the post-retrofit period these units operated with LNBs without separated overfire air. If EPA is provided information during the comment period about when these latter two units operated with LNBs only, EPA will add them to the database, provided sufficient valid data is available.

EPA recognizes that the amount of compliance NO_X data will be increasing beginning January 1, 1996 as the Phase I units start compliance reporting. EPA will carefully consider the first quarter 1996 data—subject to its timely receipt and required processing by EPA—in preparing the final NO_X rule for the Phase II units and the Group 2 units. Therefore, it is important for quarterly 1996 emission reports to be accurate and timely submitted.

TABLE 2.—KNOWN LNB APPLICATIONS ON WALL-FIRED BOILERS WITH CEMS DATA AVAILABLE

Phase	State	Utility	Plant	Boiler ID	Size (MWe)	LNB retrofit date	Baseline NO_X rate (lb/mmBtu)	Low NO_X period NO_X rate (lb/mmBtu)
1	AL	Alabama Power Co	E. C. Gaston	1	272.0	11/30/94	0.900	0.394
1	AL	Alabama Power Co	E. C. Gaston	2	272.0	04/07/92	.780	.394
1	AL	Alabama Power Co	E. C. Gaston	3	272.0	05/23/93	.800	.408
1	AL	Alabama Power Co	E. C. Gaston	4	244.8	05/21/94	.800	.408
1	KY	Big Rivers Electric Corp	Coleman	C1	174.3	02/07/94	1.340	.436
1	KY	East Kentucky Power Coop Inc	Cooper	1	100.0	03/01/94	.900	.419
1	KY	East Kentucky Power Coop Inc	Cooper	2	220.9	12/31/94	.900	.419
1	KY	East Kentucky Power Coop Inc	HL Spurlock	1	305.2	04/08/93	.900	.402
1	FL	Gulf Power Co	Crist	6	369.8	05/29/94	1.040	.462
1	FL	Gulf Power Co	Crist	7	578.0	01/02/94	1.160	.484
1	IN	Hoosier Energy REC Inc	Frank E Ratts	1SG1	116.6	10/01/94	1.068	.469
1	IN	Hoosier Energy REC Inc	Frank E Ratts	2SG1	116.6	07/01/94	1.090	.430
1	KY	Kentucky Utilities Co	EW Brown	1	113.6	06/16/93	1.000	.466
1	WV	Ohio Power Co	Mitchell	1	816.3	02/01/94	.767	.455
1	WV	Ohio Power Co	Mitchell	2	816.3	01/01/94	.767	.455
1	PA	Pennsylvania Electric Co	Shawville	1	125.0	12/25/93	.990	.438
1	IN	Southern Indiana Gas & Elec Co	F B Culley	2	103.7	05/20/94	1.050	.348
1	AL	Tennessee Valley Authority	Colbert	1	200.0	05/15/94	.800	.397
1	AL	Tennessee Valley Authority	Colbert	2	200.0	05/15/94	.670	.397
1	AL	Tennessee Valley Authority	Colbert	3	200.0	12/24/91	.830	.397
1	AL	Tennessee Valley Authority	Colbert	4	200.0	05/15/94	.860	.397
1	WI	Wisconsin Public service Corp	Pulliam	8	136.0	05/15/94	.568	.319
2	IL	Central Illinois Light Co	Ed Edwards	2	280.5	01/01/93	1.000	.445
2	NV	Sierra Pacific Power Co	North Valmy	1	254.3	06/01/94	.513	.262

TABLE 3.—KNOWN LNB APPLICATIONS ON TANGENTIALLY FIRED BOILERS WITH CEMS DATA AVAILABLE

Phase	State	Utility	Plant	Boiler ID	Size (MWe)	LNB retrofit date	Baseline NO_X rate (lb/mmBtu)	Low NO_X period NO_X rate (lb/mmBtu)
1	GA	Georgia Power Company	McDonough, J .	1	245.0	6/5/95	0.657	0.346
1	GA	Georgia Power Company	McDonough, J .	2	245.0	12/16/94	.657	.346
1	GA	Georgia Power Company	Yates	4	125.0	4/1/95	.630	.387
1	GA	Georgia Power Company	Yates	5	125.0	11/26/94	.650	.387
2	NY	Niagara Mohawk Power Corp ..	Dunkirk	1	80.0	2/1/95	.478	.308
2	NY	Niagara Mohawk Power Corp ..	Dunkirk	2	80.0	1/1/95	.478	.308
2	NY	Rochester Gas & Electric Corp	Rochester 7	4	81.6	3/31/95	.587	.363
1	WI	Wisconsin Electric Power Co ...	Oak Creek	7	317.6	7/15/94	.661	.362
1	WI	Wisconsin Electric Power Co ...	Oak Creek	8	324.0	4/16/95	.665	.362

Units in the same plant that have identical low NO_X period emission rates share a common stack. Under the Acid Rain CEMS Rule, emissions discharged by units sharing a common stack may be monitored by either a single monitor located in the stack or separate monitors located in ducts going from the units to the stack. Similarly, units sharing a common stack frequently have the same baseline NO_X rate.

Virtually all of the baseline NO_X rates in Tables 2 and 3 come from utility-reported data provided to EPA on the Acid Rain Cost Form for NO_X Control Costs for Group 1, Phase I Boilers. Utilities used a CEMS or an EPA Reference Method for measuring these emissions data.

The remaining baseline NO_X rates come from CEMS data reported in monitor certification review (CREV) tests (see docket item II–A–9). These latter data represent average NO_X emission rates calculated from 9 test runs comprising the most recent relative accuracy test audit (RATA). Each RATA test run contains about 25 minutes of CEMS data.

Tables 4 and 5 summarize comparisons of post-retrofit average NO_X emission rates computed using alternative bases: low NO_X period, post-optimization period, low NO_X period in 1995, and overall post-retrofit period following a fixed 30-day start-up period. EPA solicits comment on the relative merits of these alternative bases for determining the performance of low NO_X burners and in particular, the use of a fixed 30-day, 60-day, or 90-day start-up period, universally applied, or some other approach that reflects stabilization of the NO_X control equipment, and how to determine the proper period using the reported hourly emissions data. Summaries of these data are provided below.

TABLE 4.—DRY BOTTOM WALL-FIRED BOILERS

Comparison of average emission rates	Low NO_X period (1994–1995 data)	Post-optimization period	Low NO_X period (1995 data only)	Overall post-retrofit period
Phase I boilers	0.418	0.436	0.437	0.455
Phase II boilers	.354	.368	.354	.385
Phase I & II boilers	.413	.430	.429	.449

TABLE 5.—TANGENTIALLY FIRED BOILERS

Comparison of average emission rates	Low NO_X period (1994–1995 data)	Post-optimization period	Low NO_X period (1995 data only)	Overall post-retrofit period
Phase I boilers	0.365	0.373	0.365	0.375
Phase II boilers	.325	.327	.325	.334
Phase I & II boilers	.352	.358	.352	.361

For each boiler used in the retrofit CEMS data analysis, EPA has identified the low NO_X periods for both 1994 and 1995 as well as examined a plot of daily average NO_X emission rates over the entire post-optimization period. Where these analyses show a noticeable change occurred in NO_X emissions after the beginning of the Phase I compliance period, EPA will investigate whether switching to low sulfur coal for SO_2 control or whether other operational parameters might explain the difference in LNB performance. EPA has examined the relationship between the low NO_X period and the post-optimization period. The average NO_X emission rates for wall-fired boilers for the low NO_X period are lower than the post-optimization period. (No difference is observed for tangentially fired boilers because these two time periods are essentially equivalent in length.) Since the Phase I NO_X Emission Reduction Program is not in effect until January 1, 1996, even though LNBs are installed, the units may not be operated to optimize NO_X emissions throughout the entire post-retrofit period since O&M costs increase when operating LNBs to minimize NO_X emissions. In addition, a literature review indicates that through operational optimization NO_X emissions can be reduced by 10–20%. The existing wall-fired installations of LNBs do show a difference in NO_X reductions, depending on the portion of the post-retrofit data considered. The performance of these units, and

therefore the data analysis period, is key to deciding whether the statutory test of ''more effective'' LNBs have been demonstrated. Hence, comment is solicited on defining the best approach to evaluating this post-retrofit data. At this time, EPA has made no final decision on the length of data analysis period.

Recent publications and comments from utility industry representatives indicate that there is concern that 52-day periods (low NO_X periods) may not adequately capture annual dispatch patterns and seasonal variations in demand for electrical power generation. EPA therefore has developed estimates of ''load-weighted annual NO_X emission rates'' based on weighted averages of the average emission rate during the low NO_X period for each load bin times the number of hours during 1994 the boiler operated within each load bin. As summarized below, in less than half of the comparisons, the load-weighted annual NO_X emission rate is no more than 10% above the low NO_X period rate and in the remaining is at or below the low NO_X period rate.

TABLE 6.—COMPARISON OF AVERAGE NO_X EMISSION RATES

[Dry bottom wall-fired boilers]

	Low NO_X period	Load-weighted annual NO_X emission rate
Phase I boilers	0.418	0.409
Phase II boilers	.354	.355
Phase I & II boilers	.413	.405

TABLE 7.—COMPARISON OF AVERAGE NO_X EMISSION RATES

[Tangentially fired boilers]

	Low NO_X period	Load-weighted annual NO_X emission rates
Phase I boilers	0.365	0.325
Phase II boiler	.325	.330
Phase I & II boilers	.352	.327

EPA believes the load-weighted annual NO_X rate estimates address the concern over the adequacy of using 52-day periods. The data show that the annual emission rate projected over the actual dispatch pattern of 1994, results in approximately the same emission rate as the low NO_X period identified during the post-retrofit timeframe. EPA compared the dispatch patterns over the low NO_X period with the actual 1994 annual dispatch pattern and found them to be similar for most boilers. This indicates that the low NO_X period dispatch patterns were representative. Additionally, a strong generic relationship between NO_X and load was not found (see docket item II–A–9). Moreover, the ''52-day periods'' generally span more than two calendar months; they represent NO_X emission rates averaged over 1248 sequential hours during which the boiler was operating and valid CEMS measurements were reported. Hours for which a valid NO_X emission rate measurement is not available (e.g., hours for which substitute data was used for the NO_X emission rate), the unit was not operating, or the unit operated for only part of the hour are not included. Valid CEMS NO_X emission data after such a gap were moved forward and linked to the 52-day low NO_X data chain until there are 1248 hours of NO_X hourly data. The Technical Support Document contains information on the beginning and end of each of the 52-day low NO_X periods as well as the other bases used for estimating post-retrofit average NO_X emission rates.

EPA has tabulated the percentage of time each boiler's daily average NO_X emission rate, during the low NO_X period, was less than or equal to alternative performance standards more stringent than the existing Group 1 NO_X emission limitations. Consistent with the definition of 52-day periods and with the missing data substitution algorithms in the Acid Rain CEMS Rule, a ''daily'' average is defined as the average of a sequential (but not necessarily continuous) set of 24 hours of valid NO_X emission rate measurements excluding missing data results. Tables 8 and 9 show the percentile distributions of Group 1 boilers, by type. EPA estimated the percentage of units in the Group 1 boiler data set that during their low NO_X period in 1994 or 1995, would have complied with various alternative performance standards more stringent than the existing Group 1 NO_X emission limitations.

TABLE 8.—DRY BOTTOM WALL-FIRED BOILERS

	% of Boilers Less Than or Equal to Standard for Low NO_X Period Average				
NO_X Performance Standard (lb/mmBtu)	0.47	0.46	0.45	0.44	0.43
Phase I boilers (22)	95.5%	86.4%	72.7%	72.7%	63.6%
Phase II boilers (2)	100.0%	100.0%	100.0%	50.0%	50.0%
Phase I & II boilers (24)	95.8%	87.5%	75.0%	70.8%	62.5%

TABLE 9.—TANGENTIALLY FIRED BOILERS

	% of Boilers Less Than or Equal to Standard for Low NO_X Period Average				
NO_X Performance Standard (lb/mmBtu)	0.42	0.40	0.39	0.38	0.36
Phase I boilers (6)	100.0%	100.0%	100.0%	66.7%	66.7%
Phase II boilers (3)	100.0%	100.0%	100.0%	100.0%	100.0%
Phase I & II boilers (9)	100.0%	100.0%	100.0%	77.8%	77.8%

Viewed collectively, the various tabulations, analyses, and plots of actual post-retrofit CEMS data suggest to EPA that dry bottom wall-fired boilers with LNBs and tangentially fired boilers with LNBs can easily achieve an annual emission limitation below the current emission limitations of 0.50 lb/mmBtu and 0.45 lb/mmBtu respectively. Estimates of post-retrofit average NO_X emission rates using different bases (i.e., low NO_X period, low NO_X period in

1995, load-weighted annual NO_X rate, and post-optimization period average) are consistent; all of these rates are 14 percent or more below the current emission limitation. Commenters have observed that there is substantial uncertainty concerning the ability of Phase II boilers to meet a lower standard if one considers: (a) units with less than 52 days of monitoring data; (b) the lack of control technology performance data from tangentially fired boilers with uncontrolled emission rates higher than 0.67 lb/mmBtu; and (c) periods of performance monitoring other than the ''low NO_X period.'' Further comment is sought on this issue.

2. Assessment Using Phase II Population Projection Analysis

Figures 1 and 2 display plots of the average NO_X reduction achieved by LNBs, derived from actual retrofit CEMS data, as a function of the short-term uncontrolled NO_X emission rate. (These plots are based on the data in Tables 2 and 3 above.) Also shown in the figures are the results of linear regression models EPA developed to estimate the LNB-controlled emission rate as a function of the short-term pre-retrofit uncontrolled emission rate. EPA has selected the short-term uncontrolled emission rate as the baseline for these analyses because boiler-specific measurements of this variable are available from the CREV test data sets for almost all Phase I, Group 1 boilers and for 69 percent of Phase II, Group 1 boilers. EPA further determined that the Phase II data set (69% of the Phase II population) adequately represents the entire Phase II population by comparing boiler size and age distributions (for details of this analysis, see page 3 of docket item II–A–9).

Based on the information in Figures 1 and 2, EPA estimated the emission rates that can be achieved by Group 1 units subject to any revised emission limitations using LNBs. For both types of Group 1 boilers, EPA used the regression equation with boiler-specific CREV uncontrolled emission rates to develop projections of the LNB-controlled emission rate. For each unit, as shown by the coefficient of correlation, R^2, the regression equation accounts for about 68% (wall-fired) and 67% (tangentially fired) of the variability observed in the data. The regression equations result in NO_X reduction efficiency of low NO_X burners applied to Group 1, Phase II boilers with respect to uncontrolled NO_X emission rate. The NO_X emission reduction percentage then typically ranges from 40 percent to 67 percent for wall-fired boilers and from 35 percent to 47 percent for tangentially fired boilers, depending on each boiler's uncontrolled NO_X emission rate. The lower long-term average NO_X reduction is achieved by low NO_X burners on boilers with lower uncontrolled emission rates. Similarly, the higher long-term average NO_X reduction is achieved by low NO_X burners on boilers with higher uncontrolled emission rates. EPA solicits comment on the representativeness of the reduction efficiency ranges in determining performance of low NO_X burners.

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Figure 1

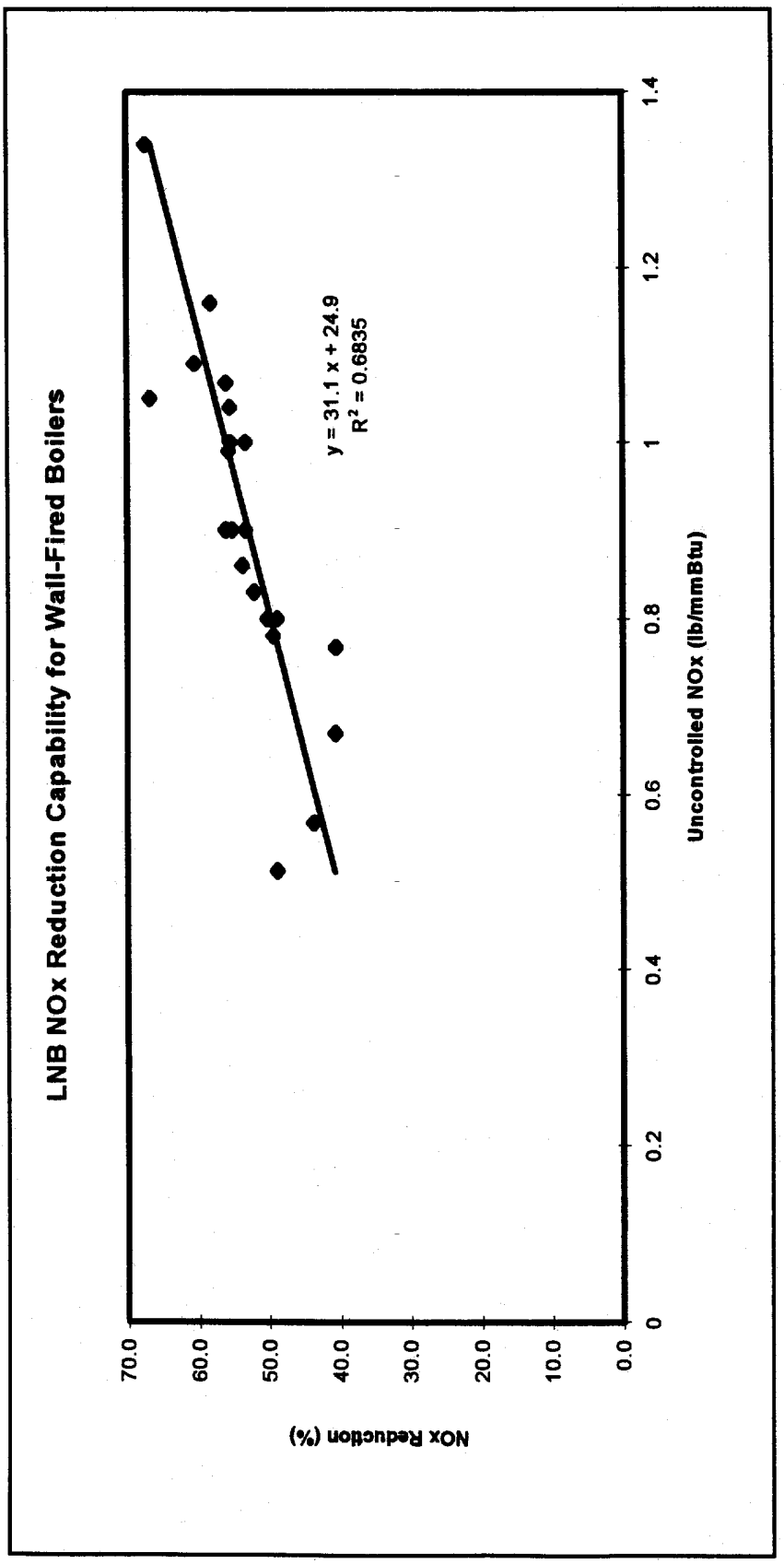
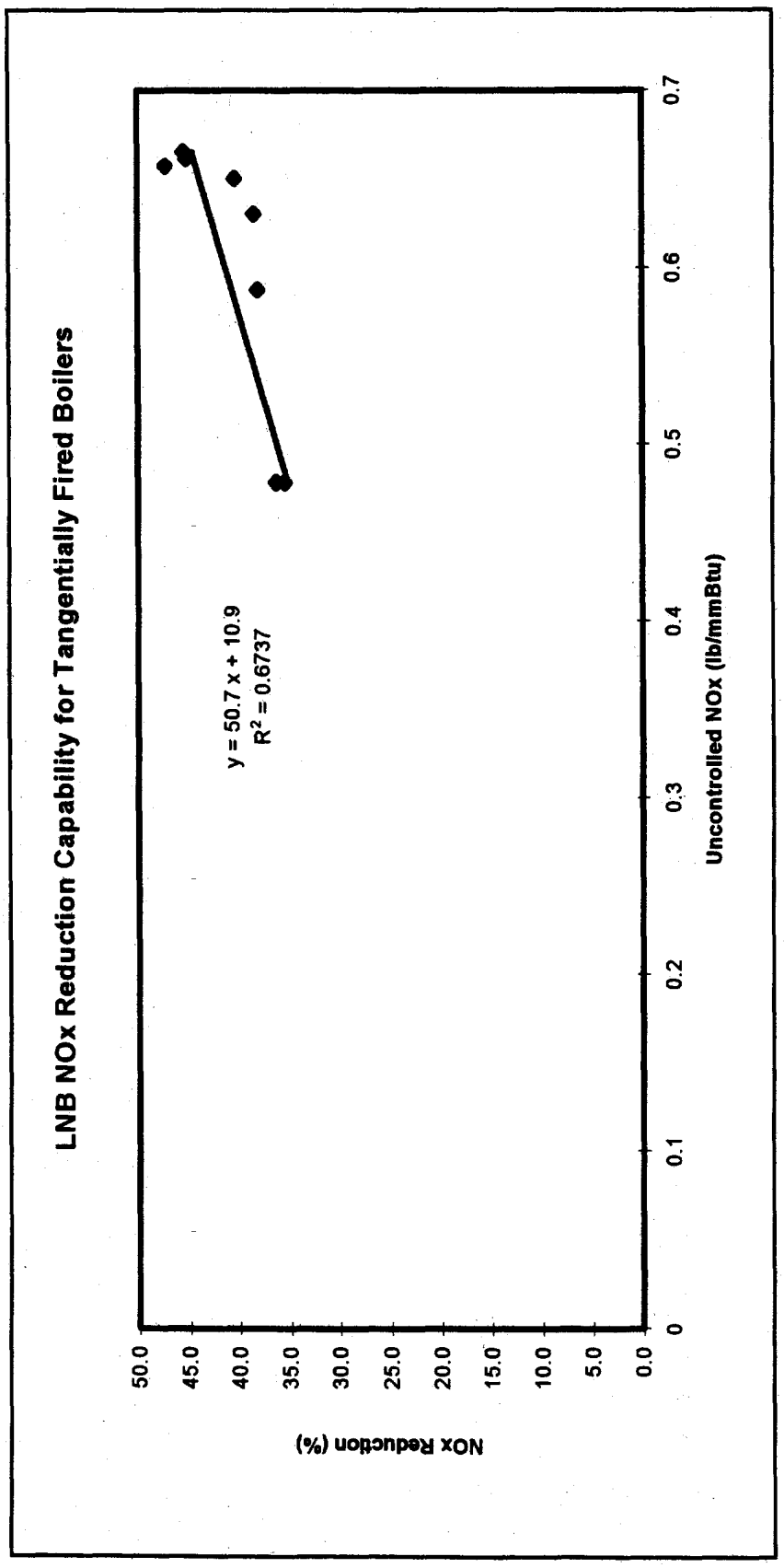

LNB NOx Reduction Capability for Wall-Fired Boilers
y = 31.1 x + 24.9
R2 = 0.6835
NOx Reduction (%)
70.0
60.0
50.0
40.0
30.0
20.0
10.0
0.0
0
0.2
0.4
0.6
0.8
1
1.2
1.4
Uncontrolled NOx (lb/mmBtu)

Figure 2



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From these boiler-specific population projections, EPA has developed percentile distributions estimating the number of Group 1 boilers (subject to any revised emission limitations) that can comply with various alternate performance standards more stringent than the current NO_X emission limitations. The resulting distributions of Group 1 boilers by percentile achievement for different performance standards are shown below.

TABLE 10.—PERCENTILE ACHIEVEMENT OF ALTERNATIVE WALL-FIRED BOILER PERFORMANCE STANDARDS

Percentile	Performance standard (lb/mmBtu)
100	0.465
95	0.451
90	0.448
85	0.441
80	0.434

TABLE 11.—PERCENTILE ACHIEVEMENT OF ALTERNATIVE TANGENTIALLY FIRED BOILER PERFORMANCE STANDARDS

Percentile	Performance standard (lb/mmBtu)
100	0.499
95	0.401
90	0.377
85	0.370
80	0.364

The percentile distributions of estimated achievable annual emission limits based on the Phase II population projection analysis indicate that 99.5% of the Phase II dry bottom wall-fired boilers could comply with a revised performance standard of 0.45 lb/mmBtu and 92.3% of the Phase II tangentially fired boilers could comply with a revised performance standard of 0.38 lb/mmBtu. These percentages indicate a better performance than is indicated by the CEMS data analysis. To determine why this difference exists, EPA investigated the uncontrolled NO_X emission rates of Phase I and Phase II boilers. A tabulation of the average uncontrolled emission rates for the Phase I and Phase II populations of Group 1 boilers shows, for both types, that Phase I boilers have higher uncontrolled emission rates.

TABLE 12.[3]—COMPARISON OF PHASE I, GROUP 1 AND PHASE II, GROUP 1 UNCONTROLLED NO_X EMISSION RATES

Boiler type	Phase I average NO_X rate	Phase II average NO_X rate	Percent difference
Dry Bottom Wall-fired	0.963	0.744	23
Tangentially fired	.652	.536	18

Hence, it is seen that Phase II boilers operate at typically lower uncontrolled emissions rates. As a result, a greater fraction of those boilers are expected to be able to meet a given emission target.

In the preceding discussion, performance data for Group 1 boilers was based on emission data for the low NO_X period, i.e., a period of 52 days of operation as defined above. If the post-optimization period as defined above were used to determine the performance of low NO_X burners, the applicable emission limits would be 0.46 lb/mmBtu and 0.39 lb/mmBtu for wall-fired and tangentially fired boilers respectively. Similarly, if the overall post-retrofit period were used, the applicable emission limits would be 0.48 lb/mmBtu and 0.39 lb/mmBtu for wall and tangentially fired boilers respectively by EPA's calculation. DOE calculates an applicable emission limit of 0.50 lb/mmBtu for wall-fired boilers using the overall post-retrofit period, excluding 2 units considered by EPA, and using a different regression formula than EPA (see docket item, II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995).

If the data used by DOE for the post-retrofit period, using DOE's computations, are representative of performance of wall-fired boilers retrofit with LNBs, then no change in the standard for such boilers would be called for and EPA in the final rule would retain the existing standard for such boilers. An analysis by DOE concluded that only 70% of the affected wall-fired units could meet the proposed emission limit of 0.45 lb/mmBtu (docket item, II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995). EPA seeks comment on the data and the computation used by DOE and on whether the existing standard should be retained for wall-fired boilers.

[3] Based on CREV data taken from EPA's database of uncontrolled NO_X emissions, presented in Appendix A of RIA.

In the case of tangentially fired boilers, DOE reviewed performance of tangentially fired boilers retrofit with LNBs in addition to those considered by EPA. The emissions data for the units have only recently been reported to EPA under part 75 and have not yet been analyzed. DOE's analysis indicates that 90% of the affected units can meet the current standard of 0.45 lb/mmBtu, but the proposed standard can be met by only 40% (docket item, II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995). If DOE's data are representative of the actual performance of these units, then no change in the standard for such boilers would be appropriate and EPA in the final rule would retain the existing standard for such boilers. EPA seeks comments on the data and on whether the existing standard should be retained for tangentially fired boilers.

EPA recognizes that in several instances the data on which today's proposal is based relate to a limited number of boilers and that analysis of the performance and cost of NO_X controls could benefit from fuller data, involving more units. For example, there are several low NO_X burner technology retrofits on tangentially fired boilers for which the Agency does not yet have available CEM data collected in accordance with part 75 and for which the Agency has not yet evaluated data not reported through part 75 that recently became available. During the comment period the Agency will have the opportunity to examine NO_X emissions data collected from these and other low NO_X burner technology installations. The Agency will also be able to expand the hourly data examined for each boiler listed in Tables 2 and 3 above to include data collected after the second quarter of 1995. In light of additional data that EPA may receive during the comment period, the final rule may establish different Phase II, Group 1 NO_X emission limitations than those proposed today. If the new information is found not to justify revising the emission limitations promulgated in Phase I, EPA will not revise them.

In light of the above discussion about new information that will be received during the comment period, in developing the proposal the Agency considered comment suggesting that the issuance of this proposal should be delayed in order to obtain fuller data on which to base determinations concerning the Phase II, Group 1 emission limitations. However, as discussed above, title IV establishes a schedule for issuance of and compliance

with the NO_X emission limitations in this proposal. Section 407(b) requires that any revision of the Group 1 emission limitations (and any Group 2 emission limitations) be established by January 1, 1997 and applicable in Phase II. Establishment by January 1, 1997 of the Phase II NO_X emission limitations under title IV will provide utilities with the information that they need concerning emission requirements for Phase II in order to fashion the most efficient strategies to comply with the Acid Rain NO_X emission reduction program. Under the Acid Rain program, compliance strategies may include: early election plans (where Phase II, Group 1 units elect to comply starting in 1997 with Phase I NO_X emission limitations and avoid any revised Group 1 limitations until 2008); NO_X averaging plans (where NO_X emissions of units with the same owner or operator are controlled to various extents and averaged to meet an overall limit); or alternative emission limitations (where a unit with controls designed, but unable, to meet the standard emission limitation can qualify for a less stringent limitation).

In light of the statutory deadlines under section 407 and EPA's analysis of the presently available data, the Agency has concluded that it has a sufficient basis for proposing revised emission limitations for Phase II, Group 1 boilers. EPA intends to use the comment period on the proposal to gather more data. The Agency stresses that it will welcome, and fully consider in the final rule, any additional data relevant to the proposed emissions limitations.

3. Conclusions

EPA proposes to find that currently available data on the effectiveness of LNB technology on Group 1 boilers demonstrates that ''more effective LNB technology is available'' for both dry bottom wall-fired and tangentially fired boilers under Phase II of the Acid Rain NO_X Emission Reduction Program. Projections developed by applying CEM-based estimated percent reductions to boiler-specific uncontrolled emission rate data for the Phase II population indicate that over 90% of dry bottom wall-fired boilers could individually meet a performance standard of 0.45 lb/mmBtu and over 90% of tangentially fired boilers could individually meet a performance standard of 0.38 lb/mmBtu.

EPA has taken the approach of selecting, as the revised emission limitations achievable by Group 1 boilers, the emission limitations that will be achievable by 90% of the applicable boiler population.

EPA chose to base the proposed emission limitation on the emission rate that a target of 90% of the population will be able to meet because of the flexibility offered by two compliance options available to all Group 1 boilers: (1) emission averaging and (2) alternative emission limitations. Group 1 boilers that install the NO_X control technology and cannot meet the applicable emission limitation on an individual boiler basis may average with other boilers that are below the applicable emission limitation or may petition the permitting authority for a more relaxed emission limit. While the Agency could have assumed that significantly more than 10% of the boiler population could use the averaging or alternative emission limitation option, the Agency maintains that use of the compliance target of 90% reasonably implements the statutory requirement that the emission limitations be based on the degree of emission reduction ''achievable'' through retrofit application of cost-comparable NO_X control technology.

This is analogous to the approach used in setting NO_X emission limitations under section 407(b)(1) for Phase I, Group 1 boilers. Section 407(b)(1) required that the Phase I, Group 1 emission limitations reflect what could be ''achieved using low NO_X burner technology'' (42 U.S.C. 7651f (b)(1)), and, in adopting the presumptive limits set forth in section 407(b)(1) (A) and (B), EPA relied on analysis showing that ''less than 10 percent of the Group 1 units would fail to meet the presumptive limits.'' 60 FR 18758.

TABLE 13.—GROUP 1 BOILER STATISTICS AND EXPECTED RESULTS

For Dry Bottom Wall-Fired Boilers				
Alternative NO_X Emission Standard (lb/mmBtu)	0.46	0.45	0.44	0.43
% boilers estimated to achieve standard based on Phase II population projection method	99.5%	99.5%	87.0%	80.9%
For Tangentially Fired Boilers				
Alternative NO_X Emission Standard (lb/mmBtu)	0.40	0.39	0.38	0.36
% boilers estimated to achieve standard based on Phase II population projection method	95.2%	93.1%	92.3%	80.6%

EPA has estimated that adopting the revised Group 1 performance standards will reduce nationwide NO_X emissions by an additional 200,000 tons annually beyond the annual tonnage reductions under the existing Group 1 emission limitations. When estimating the additional emission reductions from boilers achieving the revised performance standards, EPA has conservatively assumed that LNBs were not applied to any boilers with baseline emission rates at or below the applicable revised performance standard. Thus, these boilers would not contribute to the aggregate estimate of tons NO_X removed.

D. Adverse Effects of NO_X and Benefits of Reduction

Nitrogen oxides (NO_X) emissions result in an unusually broad range of detrimental effects to human health and the environment. NO_X is a primary precursor to ozone formation and therefore is a major component in smog (oxidant air pollution). Atmospheric deposition of nitrogen compounds contributes to the degradation of water quality in certain areas with its ensuing ecological effects. These and other effects, described below, caused by NO_X emissions or their transformation products can adversely affect the environment and human health.

Reducing NO_X emissions from coal-fired power plants by revising the emission limitations for Group 1, Phase II boilers (and by establishing emission limitations for Group 2 boilers) would be expected to produce multiple benefits. Benefits would accrue from reducing ozone within and transported into ozone non-attainment areas, reducing the formation of nitrate

particulate matter in the air, reducing ambient levels of NO_2 and PAN gases, reducing excessive nitrogen loadings to the Chesapeake Bay and other estuaries, reducing acid deposition and resulting acidification of lakes and streams, and improving visibility.

1. Formation of Secondary Pollutants, Eutrophication, and Acidic Deposition

NO_X emissions, as discharged into the atmosphere from the burning of fossil fuels, consist primarily of nitric oxide (NO). Much of the NO, however, reacts with organic radicals to form nitrogen dioxide (NO_2) and, over longer periods of time, is transformed into other pollutants, including ozone (O_3) and nitrate fine particles.

Water quality degradation due to excessive nutrients (''eutrophication'') can occur when airborne nitrogen compounds fall directly on water, particularly an estuary, or the surrounding land and enter the water through runoff. Acidic deposition occurs when airborne nitrate compounds, which can be transported over long distances, return to the earth through rain or snow (''wet deposition'') or as gases, fog, or particles (''dry deposition''). While the severity of the damages depend on the composition or sensitivity of the receptor, acidic deposition, according to the 1990 Amendments of the Clean Air Act, ''represents a threat to natural resources, ecosystems, visibility, materials, and public health.''

2. Benefits from Reducing Ozone

Ozone, which is the most abundant of the photochemical oxidants, is formed when NO_X reacts with volatile organic compounds VOCs [4] and sunlight. Heat accelerates this process, so ozone is most severe during the summer months. Ozone is a highly reactive chemical compound which can have adverse effects on human health, plants, animals, and materials. Even 6–8 hours' exposure to elevated levels of ozone can produce decreased lung function, increased airway inflammation, increased sensitivity to lung infection in adults and children, the effects being most pronounced during outdoor work and exercise (see docket item II–A–10; Krupnick and Ozkanynak, 1991; Huang, 1988; Abbey, 1993). Elevated ozone increases the risk and intensity of asthma attacks (Wittmore and Korn, 1980; Krupnick, 1988). The Public Health Service of the National Institutes of Health estimates that, in 1992, 12.4 million Americans had asthma (Benson, 1994).

Ozone at currently occurring levels also inhibits photosynthesis in crops, trees, and plants, which leads to reduced agricultural crop yields, increased susceptibility to pests and disease, and economic losses associated with noticeable leaf damage in ornamental plants. According to the National Acid Precipitation Assessment Program (NAPAP), ozone has been responsible for significant reductions in the annual yields of several domestically important crops: corn, 1%; cotton, soybeans, 7%; and alfalfa, 30% (NAPAP, 1990). Other analyses of five-year data from the National Crop Loss Assessment Network (NCLAN) [5] corroborate this assessment (Sommerville, 1989).

A growing body of scientific evidence indicates that reducing NO_X emissions on a regional basis is a cost-effective approach to achieving the ozone NAAQS the most seriously polluted ozone nonattainment areas of the Eastern U.S.[6] (60 FR 45583, August 31, 1995). These areas have consistently failed to achieve this health-based standard despite up to 20 years of applying controls to sources of VOCs, another ozone precursor, on a localized basis (NRC, 1991). Recent studies of the South, the Northeast Corridor, and the states bordering Lake Michigan conclude that ozone and NO_X transported from attainment areas both within the regions and outside of the regions contribute significantly to ozone non-attainment within the regions (see Southern Oxidants Study, 1995; 60 FR 4217; 60 FR 45580). Modeling performed by EPA for the Ozone Transport Region (OTR), a 12-state region spanning the Northeast Corridor from Northern Virginia to Maine, shows that NO_X emission controls on major sources outside the OTR, primarily power plants in the Midwest, would provide significant incremental reductions, ranging from 12–20%, to polluted areas inside the OTR (US EPA, 1994b). Thirty-two states, as well as areas of Canada, were included in EPA's modeling studies of ozone transport in the Eastern U.S. Achievement of ozone attainment in these regions and protection from ozone-related human health and other effects depend, in part, on reducing NO_X emissions in upwind areas of these regions. EPA notes that 77% of the Group 1, Phase II boilers, and 89% of the Group 2 boilers are located in areas adjacent to and east of the Mississippi River.

3. Benefits from Reducing Particulate Matter

NO_X emissions can not only transform into ozone and other photochemical oxidant gases, they can also react with ammonia, other constituents, and moisture in the atmosphere to form acidic and other nitrate fine particles. Exposure to current levels of fine particles in the air has a wide range of health and other adverse effects, ranging from higher cleaning expenses effects on morbidity and mortality (see Schwartz, 1994; Fairday, 1990; and US EPA, 1995b). Nitrates are considerably smaller than 10 microns and are part of the PM_{10} particulate matter subclass $PM_{2.5}$, called ''fine particles.'' Documented illnesses caused by exposure to fine particles, particularly over extended periods of time, include: various respiratory diseases, eye irritation, aggravation of existing cardiovascular disease, and lowering the body's resistance to carcinogenesis and foreign materials.

Adverse respiratory health effects can also occur when people, particularly individuals in sensitive subpopulations, breathe aerosols (Thurston, 1989). Acidic aerosols include solid particles and liquid droplets suspended in the air that are generated when NO_X transforms into nitrates. One of the benefits of additional NO_X emission reductions would be health and economic benefits associated with reductions in the formation of nitrate fine particles.

4. Benefits from Reducing NO_2

NO_2 is a brownish gas that has been documented to cause eye irritation in people, either by itself or when oxidized photochemically in the presence of VOCs and sunlight into PAN (Schwartz et al., 1988). Elevated levels of NO_2 have also been documented to cause lower respiratory illness (LRI) in otherwise normal children, making them suffer from chronic cough, persistent wheezing, and/or chronic phlegm (Neas, 1991). Persons with pre-existing chronic obstructive pulmonary disease (COPD), estimated to be 14 million in the U.S. (U.S. Department of Health and Human

[4] Like NO_X, volatile organic compounds (VOCs) are emitted directly into the atmosphere from a combination of man-made sources (burning of fossil fuels in utility and industrial boilers, motor vehicle emissions, hydrocarbon releases from dry cleaning and other industrial processes) and natural sources (mostly vegetation).

[5] NCLAN was established by EPA during the 1980s for controlled field tests to develop dose-response relationships between ozone concentrations and crop yield.

[6] See Regional Ozone Modeling for Northeast Transport (ROMNET), EPA Doc. EPA–450/4–91–002a (June 1991), and Chu, S.H., E.L. Meyer, W.M. Cox, R.D. Scheffe, ''The Response of Regional Ozone to VOC and NO_X Emissions Reductions: An Analysis for the Eastern United States Based on Regional Oxidant Modeling,'' Proceedings of U.S. EPA/AWMA International Specialty Conference on Tropospheric Ozone: Nonattainment and Design Value Issues, AWMA TR–23, 1993.

Services, 1990), and asthmatics are more likely to suffer from respiratory ailments or chronic illness (decreased lung function and increased risk of lung infection) caused by exposure to NO_2 than the general population.

5. Water Quality Benefits

Atmospheric deposition of nitrates can be a significant factor in the degradation of water quality and its associated health risks and damaging ecological effects. Various forms of nitrogen have been measured as wet and dry deposition falling on the Chesapeake Bay and its watershed. Eutrophication, which results from excessive nitrogen loadings, can cause adverse ecological effects. Impacts range from nuisance algae blooms to the depletion of oxygen with resultant fish kills. Approximately 25–40% of total nitrogen entering the Bay and other estuaries is a result of atmospheric deposition (US EPA, 1994a).

A study of the Chesapeake Bay, performed under a Congressionally mandated program to evaluate the effects of atmospheric deposition to pollutant loadings in the Great Water Bodies of the U.S., determined that the majority of airborne nitrogen compounds over the Bay are emitted by power plants and motor vehicles (US EPA, 1994a). Reductions in NO_X emissions from power plants are substantially less expensive to implement than alternative controls for reducing nitrogen loadings to the Bay from point (wastewater plants) and area (farms, animal pastures) sources. Such alternatives are presently being considered by the States of Maryland, Pennsylvania, and Virginia, and the District of Columbia in order to achieve a 40%-reduction in nutrient supplies to the Bay by the year 2000, to which these jurisdictions have committed. The average cost-effectiveness of these other controls are: chemical addition or biological removal of nitrogen from wastewater processing ($4,000 to over $20,000/ton nitrogen removed) and ''management practices'' to reduce nitrogen from fertilizers, animal waste, and other nonpoint sources ($1,000 to over $100,000/ton of nitrogen removed) (Camacho, 1993; Shuyler, 1992). By comparison, the average cost-effectiveness of LNB applied to Group 1 coal-fired boilers in this proposal is estimated to be $250/ton of NO_X removed, which corresponds roughly to $500/ton of nitrogen removed. (Similarly, NO_X controls applied to Group 2 coal-fired boilers have an average cost-effectiveness of $150/ton, or roughly $300/ton of nitrogen removed.)

6. Visibility and Acidic Deposition Benefits

Nitrogen dioxide (NO_2) and nitrate particulates also contribute to pollutant haze, which impairs visibility and can reduce residential property values as well as revenues generated by tourism, national parks, etc.

Atmospheric deposition of nitrogen compounds is an important component in the acidification of lakes and streams. Recent scientific studies indicate the amount of nitrogen that can be sequestered in certain watersheds by biological and other processes is limited (US EPA, 1995). As these watersheds approach nitrogen saturation, nitrates can begin to leach into surface waters, accelerating the process of long-term chronic acidification. Further, according to EPA's Acid Deposition Standard Feasibility Study Report to Congress, ''both sulfates and nitrates originating from atmospheric deposition can contribute significantly to episodic acidification events'' (US EPA, 1995:14). Episodic acidification occurs when highly acidic water, toxic to fish, enter lakes and streams during storm flow or snowmelt runoff, often during spawning season in the Spring. Acidified ecosystems can show signs of recovery, however, following reductions in acidic deposition rates. Environmental modeling performed for EPA's Acid Deposition Standard Feasibility Study predicts benefits to varying degrees in watersheds where atmospheric deposition of acidic compounds has been and will continue to be reduced (US EPA, 1995). One study conclusion is that additional limits on nitrogen deposition would likely produce a two-fold potential benefit by reducing acidic deposition rates and lengthening the average time for watersheds to reach nitrogen saturation (US EPA, 1995:56).

Efforts are currently underway to further investigate the mechanisms by which nitrogen deposition directly impacts or works with other pollutants to damage structural and other materials (NAPAP, 1993).

E. Revised Emission Limits for Group 1 Boilers

EPA proposes, for the following reasons, that the Administrator should exercise her discretion under section 407(b)(2) to revise the emission limitations for Group 1 boilers to be more stringent. As discussed above, analysis of the performance of LNBs on Group 1 boilers shows that more effective low NO_X burner technology is available. Group 1 boilers subject to NO_X emission limitations starting on or after January 1, 2000 are capable of achieving, with LNBs: 0.45 lb/mmBtu for dry bottom wall-fired boilers and 0.38 lb/mmBtu for tangentially fired boilers. Further, revision of the limitations would result in additional NO_X reductions of about 200,000 tons annually. In light of the significant, adverse impacts of NO_X emissions on human health and the environment, these additional reductions would be beneficial. Finally, revision of Group 1 emission limitations would be a cost-effective way of achieving these reductions, relative to alternative pollution control strategies. Therefore, EPA proposes to adopt the revised Group 1 emission limitations.

F. Compliance Date

Industry has expressed concern about the regulated utility community's ability to begin the Phase II program on January 1, 2000, should EPA decide to revise the Group 1 emission limitations (see docket A–92–15, item VIII–A–1, Brief of Petitioners, July 1, 1994). No statutory provision exists for extension of the Phase II compliance deadline analogous to the 15-month Phase I compliance extension authorized by section 407(d) of the Act. Since four times as many Group 1 boilers are subject to NO_X emission limitations in Phase II as are in Phase I, industry spokespersons are concerned that utilities may have barely enough time to procure LNB technology, schedule outages, and install and test equipment, consistent with system reliability (see docket A–92–15, item VIII–A–1, Brief of Petitioners, July 1, 1994).

Actual experience to date in preparing for Phase I, however, indicates the anticipated technology shortage may not materialize. EPA has received only 9 requests for the Phase I compliance extension. Moreover, EPA has already received several inquiries about early election for compliance with NO_X emission limitations in Phase I by units subject to NO_X emission limitations starting in Phase II. This suggests that an adequate supply of Group 1 LNB technology is available.

EPA solicits comments from utilities and LNB technology vendors on their ability to meet the statutory Phase II compliance date. Comments advocating a compliance date extension should describe specific problematic situations associated with the procurement and/or installation of LNB technology and differentiate between site specific and generic industry concerns.

EPA also requests comment on the need for a compliance extension for boilers that must meet a more stringent title I NO_X limit on a date certain after the statutory title IV Phase II

compliance date, and on whether there is a legal basis for such extension.

G. Definition of Coal-Fired Utility Unit

EPA proposes to revise the definition of ''coal-fired utility unit'' as it applies to Phase II units. Under the current provision in § 76.2, any Phase II unit for which combustion of coal (or coal-derived fuel) is more than 50.0 percent of the unit's annual heat input in 1995 is a ''coal-fired utility unit'' and is therefore subject to the Acid Rain NO_X emission limitation for the unit's boiler type. However, the current definition raises the question of whether the Acid Rain NO_X emission limitations apply to a unit that is designed to combust, and has previously combusted, coal but is shutdown for all of 1995 and resumes operation thereafter. EPA sees no basis for treating such a unit differently from another unit that is designed to combust coal and operates during 1995 and thereafter.

Consequently, EPA proposes to revise the ''coal-fired utility unit'' definition to include any Phase II unit that does not combust any fuel that results in the generation of electricity during 1995 but has combusted in any year during 1990–1995 fuel that comprised more than 50 percent coal and that resulted in the generation of electricity.

III. Control of NO_X Emissions From Group 2 Boilers

A. Description of Group 2 Boilers

Under section 407(b)(2) of the Act, EPA is required to establish NO_X emission limitations (on a lb/mmBtu annual average basis) for Group 2 boilers including wet bottom wall-fired boilers, cyclones, units applying cell burner technology, and all other types of utility boilers not classified as dry bottom wall fired and tangentially fired boilers, by January 1, 1997. In the following sections, information is presented on the basic design, population, and estimated uncontrolled NO_X emissions from each of these boiler types. For details pertaining to this information, please refer to the Group 2 technical support document (see docket item II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, pp. 2–1 to 2–4) and EPA's Regulatory Impact Analysis (see docket item II–F–2).

1. Basic Designs of Group 2 Boilers

Cell Burner Boilers. These boilers are dry bottom units that consist of arrays of two or three closely-spaced circular burners in a vertical assembly, i.e., the cell, mounted on opposed walls of the furnace. Furnaces equipped with cell burners fire coal, oil, and natural gas. Generally, in these furnaces, the close spacing of circular burners results in hotter burner zones than those in dry bottom wall-fired furnaces equipped with circular burners that are not clustered. As a consequence, cell burner equipped boilers have high combustion efficiencies but typically generate high levels of NO_X emissions.

Cyclone Boilers. Cyclone boilers are wet bottom units fired on crushed coal. In these boilers, fuel and air are burned in horizontal water-cooled cylinders, called cyclones. The arrangement of coal burners and secondary air ports in a cyclone results in a spinning, high temperature flame. Relatively high furnace temperatures in a cyclone cause conversion of ash into a molten slag. This slag collects on the cylinder walls and then flows down the furnace walls into a slag tank located below the furnace. As a result of high furnace temperatures, cyclone boilers are generally characterized by high NO_X emissions. Though cyclone boilers are wet bottom boilers, they are not included in the wet bottom category due to their unique firing pattern as explained above.

Wet Bottom Boilers. This type of boiler includes several firing configurations (e.g., wall fired and vertically fired) and is characterized by wall mounted burners, similar to those in dry bottom units. However, the furnace temperatures in these boilers are generally higher than those in corresponding dry bottom units, thereby resulting in furnace zones hot enough to melt the ash. Slag produced by melting of the ash flows down and is tapped off from the bottom of the furnace.

Vertically Fired Boilers. In these boilers, conventional circular burners or coal and air pipes are oriented downward, rather than horizontally as in wall-fired boilers. In general, these boilers have more complex firing and operating characteristics than wall or tangentially fired boilers. Several vertically fired furnace designs are in operation today, including top-fired, roof-fired and arch-fired configurations.

In top-fired and roof-fired boilers, burners are mounted on the roof of the furnace and combustion gases flow downward and through a superheater located at the bottom of the furnace. In arch-fired boilers, burners mounted on lower furnace arches generate long, looping flames and hot combustion gases discharge up through the center.

It should be noted that the vertically fired category consists of only dry bottom boilers. Wet bottom vertically fired boilers are included in the wet bottom boiler category, along with wet bottom wall-fired boilers.

Stoker Boilers. Coal-fired stoker boilers range in size from 2,000 lb/hr to approximately 500,000 lb/hr steam generation capacity. Practical design considerations limit stoker size and maximum steam generation rates depending upon the type of fuel being fired. The major types of stoker boilers include spreader stokers, underfed stokers, and overfed stokers, which reflect the differences in the manner of coal injection into the boiler. Additional stoker types or subcategories (including traveling or chain grate, vibrating grate, and dumping grate) reflect different methods of removing ash from the combustion bed surface or grate.

FBC Boilers. Fluidized-bed combustors (FBC) range in size from industrial boilers that produce less than 50,000 lb/hr of steam up to utility-type boilers that generate hundreds of megawatts of power. In these boilers, crushed coal in combination with some inert material (e.g., silica, alumina, or ash) and air is maintained in a turbulent suspended ''fluidized'' state and combusted at relatively low furnace temperatures. FBC designs have been classified as either bubbling or circulating, depending on the velocity of the solids moving through the combustor. Additionally, these boilers can be designed to operate under atmospheric or pressurized conditions, resulting in atmospheric FBC (AFBC) or pressurized FBC (PFBC) systems.

2. Characterization of the Group 2 Boiler Population and Uncontrolled NO_X Emissions

Table 14, shown below, exhibits the differences in boiler types with respect to population, nameplate capacity, size, and estimated uncontrolled NO_X emissions. This table has been developed using the information presented in the EPA Group 2 Boiler Database found in Appendix A of the Group 2 technical support document (see docket item II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers). Note, however, that this table excludes certain units that are not expected to be in operation beyond the year 2000. A listing of these units can be found in EPA's RIA (docket item II–F–2). EPA requests comment on the data presented in this table.

TABLE 14.—CHARACTERIZATION OF GROUP 2 BOILERS

Boiler type	Population		Nameplate capacity		Size mean range		Estimated uncontrolled NO_X	
	(Units)	Percent	(MWe)	Percent	(MWe)	(MWe)	(Tpy)	Percent
Cell-burner	35	16	24,060	36	690	38–1,300	668,000	38
Cyclone	88	41	27,495	41	310	33–1,150	732,000	41
Wet-bottom [7]	38	18	8,576	13	226	29–544	277,000	16
Vertically Fired [8]	29	13	4,612	7	159	50–254	97,000	5
Stoker	21	10	1,083	2	52	32–79	3,000	~0
FBC	6	2	889	1	148	75–194	2,000	~0
Total	217	100	66,715	100			1,779,000	100

B. NO_X Control Technologies for Group 2 Boilers

1. Available Group 2 Boiler NO_X Control Technology

EPA considers a NO_X combustion modification technology to be available for a type of Group 2 boiler if there exists at least one full-scale demonstration or commercial application of that technology on that type of boiler. Further, if a utility has successfully applied a combustion control technology on a full-scale boiler of that type, then that technology is also considered to be available. EPA considers a NO_X post-combustion control technology to be available for each type of boiler if it has been demonstrated on any full scale boiler.[9] Because these latter controls are applied downstream of the combustion process, they do not affect combustion and can be applied to any boiler type.

Shown in Table 15 are full-scale NO_X control retrofits that have been installed or will be installed in the very near future in the U.S. Using the information in this table, the following NO_X control technology and Group 2 boiler type combinations are considered to be available.

- Plug-in and non plug-in combustion controls on cell burner boilers.
- Coal reburning on cyclone boilers.
- Gas reburning on cyclone boilers.
- Selective non-catalytic reduction (SNCR) on all coal-fired boilers.
- Selective catalytic reduction (SCR) on all coal-fired boilers.
- Combustion controls on wet bottom and vertically fired boilers.

TABLE 15.—GROUP 2 BOILER NO_X CONTROL TECHNOLOGY DEMONSTRATIONS AND COMMERCIAL RETROFITS

NO_X control technologies	Boiler type	Number of full-scale or commercial retrofits	Retrofit size range (MWe)
Plug-In Retrofits (Low NO_X Combustion Controls)	Cell-Burner	7	555–780
Non Plug-In Retrofits (Combustion Controls and Wall Replacements).	Cell-Burner	3	630–760
Coal Reburning	Cyclone	1	110
Gas Reburning	Cyclone	2	33–114
SNCR	Cyclone	1	138
	Wet Bottom	1	321
	Vertically Fired	1	100
SCR	Cyclone	1	320
	Wet Bottom	1	[10] 80 (321)
Combustion Controls	Wet Bottom	1	217
	FBC	6	75–194
	Vertically Fired	4	100–152

Note that no NO_X control demonstrations were found for stoker boilers covered under title IV of the Act.

2. Description of Group 2 Boiler NO_X Control Technologies

Basic descriptions of the NO_X control technologies that EPA considers available for Group 2 boilers are provided in this section. For more details on these technologies and their applications on Group 2 boilers, please refer to the Group 2 technical support document (see docket item II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, pp. 3–1 to 3–36) and 57 FR 55648–49 (November 22, 1992). Additional information can be found in site reports written by EPA personnel who inspected certain Group 2 boilers applying NO_X control technologies (see docket items II–B–1 through II–B–6).

Combustion Controls for Cell Burner Boilers. In plug-in combustion control retrofits, all existing cells in a furnace are replaced by either low NO_X burners or by using the existing cell burner openings to install low NO_X burners in combination with overfire air ports. To date, these controls have been applied to two-nozzle cell burners, and their

[7] NO_X controls for wet bottom boilers of any firing design have to be designed to not perturb furnace temperatures and thereby not disturb slag tapping capability. Thus from the standpoint of NO_X control, wet bottom boilers of all firing designs, including wall-fired and vertically fired boilers, are grouped in one category: wet bottom boilers. The wet bottom category in the above table includes several firing configurations, viz., 20 front wall fired, 5 opposed wall-fired, 4 arch fired, 3 turbo fired, and 6 roof fired.

[8] The dry bottom, vertically fired category includes the following designs: 5 arch fired, 12 roof fired, 3 top fired and 13 vertically fired.

[9] The manufacturer of cyclone boilers, in a recent letter to EPA dated October 27, 1995, stated that a significant portion of cyclone boilers in the US cannot achieve 50% reduction in NO_X emissions using coal reburn.

[10] SCR system was installed only in one of four ducts of the 321 MWe boiler, and only one quarter of the total unit's flue gas volume passes through the SCR system (equivalent to 80 MWe).

installation requires no modifications to boiler pressure parts and only minor modifications to burner piping. EPA believes that this technology can be modified and adapted to three-nozzle cell burner configurations.

Non plug-in combustion control retrofits have been applied to all types of cell burner configurations. With this approach, portions of the furnace walls containing cells are replaced by new walls containing low NO_X burners or low NO_X burners with overfire air. This technology has been applied to both two-nozzle and three-nozzle cell burner configurations and essentially converts the cell-burner firing arrangement to a conventional wall-fired arrangement.

Reburning. Reburning is a low NO_X combustion technology in which part of the main fuel heat input is diverted to a location above the main burners, thus creating a secondary combustion zone called the reburn zone. Completion or overfire air (OFA) is added above the reburn zone to complete the burnout of the reburn fuel. The reburn fuel can be natural gas, pulverized coal, or oil. The arrangement of injection of reburn fuel and OFA causes the reburn zone conditions to be sub-stoichiometric. As flue gas passes through this sub-stoichiometric zone, part of the NO_X formed in the main combustion zone is reduced by radical fragments and converted to molecular nitrogen. The source for these radical fragments is the combustion gas from the secondary, or reburning, fuel fired in reburn injectors or burners.

Selective Non-catalytic Reduction (SNCR). SNCR is a post-combustion NO_X control technology that injects a reducing agent (urea, ammonia, or cyanuric acid) into the boiler's flue gas for NO_X control. The reducing agent reacts with NO_X in the flue gas to form molecular nitrogen and water. The SNCR reactions take place in a temperature range of 1600 to 2100 °F.

Selective Catalytic Reduction (SCR). SCR is a post-combustion NO_X reduction process in which ammonia is added to the flue gas, which then passes through layers of a catalyst. The ammonia and the NO_X react on the surface of the catalyst, forming molecular nitrogen and water. The temperature window for SCR reactions is between 575 and 750 °F.

Combustion Controls for Vertically Fired, Wet Bottom, and FBC Boilers. Combustion staging concepts are currently being applied at vertically fired boilers (see docket items II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, p. 3–18; II–B–4; and II–B–6). Specifically, these concepts involve redistributing coal and primary air flows to establish a primary fuel rich zone and redistributing secondary air flow to create a secondary fuel rich zone. Burnout is completed by providing staged burnout air. A combustion staging system using two levels of overfire air is being installed in the Fall of 1995 by a utility on a wet bottom boiler (see docket items II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, p. 3–18; and II–D–30). All the FBC boilers subject to section 407(b)(2) already have combustion controls.

C. Statutory Requirements

Section 407(b)(2) of the Act requires the Administrator to set, by January 1, 1997, annual emission limitations for NO_X for units with Group 2 boilers, i.e., wet bottom wall-fired boilers, cyclones, units applying cell burner technology, and ''all other types of utility boilers''. 42 U.S.C. 7651f(b)(2). The Administrator must base these emission limitations on

> the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs, and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to [section 407] (b)(1). *Id.*

Section 407(b)(2) thus provides instruction to the Administrator for setting Group 2 emission limitations based on what reductions can be achieved by the best continuous control technologies. First, the costs of the control technologies on which the Administrator bases Group 2 emission limitations must be ''comparable'' to the costs of low NO_X burner technology as applied to Group 1 boilers. The statute does not explain what is meant by ''comparable'' costs or how ''costs'' are to be measured. These matters are left to interpretation by the Administrator in applying section 407(b)(2). *See Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837, ____ (1984). However, the legislative history provides some assistance in the interpretation of the comparable-cost requirement.

> As explained by the Conference Report to the Clean Air Act Amendments of 1990,
>
> Section 407(b)(2) is intended to incorporate a portion of the Senate Environment and Public Works Committee Report of December 20, 1989, S. Report 101–228, that the NO_X emission control technology requirements for cyclone boilers, roof-fired boilers, wet-bottom boilers, stoker boilers and cell burners are to reflect the relative difficulty of controlling NO_X emissions from these boilers. Emission limitations that are promulgated under section 407(b)(2) are to be based on methods that are available for reducing emissions from such boilers that are as cost-effective as the application of low nitrogen oxide burner technology to dry bottom wall-fired and tangentially-fired boilers. House Rep. No. 101–952, 101st Cong., 2d Sess. at 344 (October 26, 1990).

The relevant portion of the Senate Report, which is referenced in the Conference Report, discusses the cost-effectiveness and difficulty of reducing NO_X emissions, explaining that the Senate bill intended:

> To compel utilities to do no more than make most cost-effective reductions. While in past years the Committee has reported legislation that differentiated, and eased, the requirements imposed on cyclone boilers, here the provisions also differentiates [sic], and eases [sic], requirements for wet bottom and stoker boilers as well. This reflects the relative difficulty of controlling NO_X for these technologies.
>
> * * * Also favoring the cost-effectiveness of this section is the development of new, lower-expense technologies. Sorbent injection and decreasing costs for selective catalytic reduction (SCR) may lower the expense of initial NO_X reductions even further. For example SCR has long been viewed as prohibitively expensive, but recent dramatic declines in cost have brought the per-ton-removed price of this technology down to as low as $600, according to recent Electric Power Research Institute metholology followed by EPA. This is comparable to the cost of conventional control methods like low-NO_X burners and thermal de-NO_X However, the provisions in this section are not intended to mandate use of SCR or any other specific technology. Senate Rep. No. 101–228, 101st Cong., 1st Sess. at 332–33 (December 20, 1989).

In short, the legislative history explains that comparability of costs is to be determined by comparing the cost-effectiveness, measured as costs per ton of NO_X removed, of NO_X control technologies on Group 2 boilers with that of low NO_X burner technology on Group 1 boilers. In addition, the Senate Report, which was expressly relied on in the Conference Report, indicates that a control technology (SCR) with a cost-effectiveness of $600 per ton of NO_X removed was regarded as having a cost comparable to that of low NO_X burner technology. At the time the Senate Report was issued, the cost of low NO_X burner technology was thought to be about $150 to $200 per ton of NO_X removed. *Id.* at 470.

In addition to the cost-comparability requirement, section 407(b)(2) requires that, in setting Group 2 emission limitations, the Administrator must ''tak[e] into account available technology, costs and energy and environmental impacts.'' 42 U.S.C. 7651f (b)(2). While consideration of these factors is mandated, Congress did not specify—and thus left to the Administrator's interpretation—how to

balance and apply these factors. In particular, the Administrator must decide how to evaluate the factors and what relative weight to give each factor.

D. Methodology for Establishing Group 2 Emission Limitations

In order to meet the requirements of section 407(b)(2), EPA is using the following methodology for establishing Group 2 emission limitations.

First, as detailed in Section III.B, EPA has taken the approach of determining what NO_X control technologies are available for each category of Group 2 boilers and basing Group 2 emission limitations only on such technologies. EPA has considered a combustion control technology available for a Group 2 boiler category only if the technology has been demonstrated on a full-scale boiler in that category. Because post-combustion technology is applied downstream of combustion hardware, a post-combustion technology was considered available for any boiler type if it has been demonstrated on any full-scale boiler.[11] Further, EPA considers only technologies for which there is reliable cost information on which to base a determination of whether they are of comparable cost to LNBs.

Second, as detailed in Section III.E, EPA evaluated each demonstrated control technology and estimated the dollar cost per ton of NO_X removed using the control technology on each boiler in the Group 2 population that is in the appropriate Group 2 boiler category. EPA then compared the dollar cost per ton of NO_X removed for the entire Group 2 population to the dollar cost per ton of NO_X removed for low NO_X burners applied to the entire Group 1 population. In addition, EPA compared the dollar cost per ton of NO_X removed for each Group 2 boiler category (using the appropriate control technology) with the dollar cost of NO_X removed with low NO_X burners on Group 1 boilers. For technical reasons discussed below, EPA chose to adopt a somewhat different cost comparison methodology than the methodology outlined in Appendix B of the March 22, 1994 Acid Rain NO_X regulations (59 FR 13538, 13578 (March 22, 1994)).

Section 407(b)(1) requires the Administrator to set emission limitations for Group 1 boilers (i.e., dry bottom wall-fired and tangentially fired boilers) for Phase I and Phase II based on what emission limitations can be achieved ''using low NO_X burner technology.'' 42 U.S.C. 7651(b)(1). Only if the Administrator determines that ''more effective low NO_X burner technology is available'' may the Group 1 emission limitations under section 407(b)(1) be revised for boilers that first become subject to Acid Rain SO_2 and NO_X emission limitations in Phase II. 42 U.S.C. 7651(b)(2).

In short, the NO_X emission limitations set in section 407(b)(1) based on low NO_X burner technology apply to all Group 1 boilers, whether they are first subject to limitations in Phase I or Phase II. Any revisions to these emission limitations must also be based on low NO_X burner technology. EPA concludes that the ''nitrogen oxides controls set pursuant to section 407(b)(1)'' are low NO_X burner technology applied to all Group 1 boilers. *Id*. EPA therefore believes that section 407(b)(2) requires that the costs of the control technologies used to set emission limitations for Group 2 boilers be comparable to the costs of low NO_X burner technology applied to all Group 1 boilers.

By considering only Group 1, Phase I boilers that have reported low NO_X burner technology cost information, the methodology originally specified in Appendix B eliminates over 90% of the Group 1 boilers from the comparative analysis. This limitation, together with other constraints in the methodology, results in a dataset only marginally adequate for estimating NO_X control costs in a manner consistent with the intent of section 407(b)(2). The population pertinent to the determination, under section 407(b)(2), of Group 1 boiler NO_X control costs is all Group 1 boilers employing or projected to employ low NO_X burner technology[12] to meet the section 407(b)(1) emission limitations. That is the population EPA has used in the proposed rule for establishing emission limitations for Group 2 boilers.

The Appendix B methodology also specifies using the ''average cost-effectiveness (in annualized $/ton NO_X removed) of installed low NO_X burner technology applied to Group 1, Phase I boilers'' (60 FR 18776) as the basis for identifying comparably cost-effective Group 2 control technologies for the purposes of setting emission limitations for Group 2 boilers. EPA discovered that, for distributions with broad ranges, an analysis based solely on measures of central tendency (e.g., mean, median, mode, or ''average'') always neglects important information about the spread and shape of the distribution. Based on the actual data that became available in late 1995, EPA has determined that the projected cost-effectiveness of low NO_X burner technology applied to Group 1 boilers, and the projected cost-effectiveness of NO_X control technologies applied to Group 2 boilers are such distributions. The values range from $50/ton to over $1600/ton. Thus, restricting the comparative analysis to the comparison of a single measure of central tendency, such as the average value of the cost-effectiveness of low NO_X burner technology applied to Group 1 boilers, results in a substantial loss of information. Therefore, rather than simply comparing averages, a more illuminating and statistically defensible evaluation would be based on a comparison of ranges of cost-effectiveness and percentages of boilers in each distribution projected to experience similar cost-effectiveness.

EPA has adopted Appendix B when determining the capital cost (in $/kW) of low NO_X burners. However, considering the serious, unanticipated limitations in the Appendix B methodology for estimating and comparing NO_X control cost-effectiveness (in $/ton) for Group 1 and Group 2 boilers, EPA has decided to include all Group 1 boilers in the analysis and to broaden the original concept of ''average'' to include ranges of cost-effectiveness and percentages of boilers in each population projected to experience similar cost-effectiveness. As a result, EPA proposes to delete Section 3 of Appendix B from part 76 and make limited modifications to the remaining portions of Appendix B consistent with the approach taken in today's proposal. EPA requests comment on whether it should delete Section 3 of Appendix B from part 76 or follow Appendix B or otherwise modify Appendix B. Further details on the rationale for expanding the original concept of ''averaging'' to include ranges of cost-effectiveness and percentages of boilers projected to experience similar cost-effectiveness can be seen in the docket item II–A–7, Draft Report, Costs of Low NO_X Burner Technology Applied to Dry Bottom Wall-Fired and Tangentially Fired Boilers, EPA Acid Rain Division, November 30, 1995.

EPA also seeks comment on the proper interpretation of the term ''comparable to the cost'' as used in section 407(b)(2). Specifically, EPA is seeking comment on the appropriate approach for comparing control technology costs for Group 1 boilers and Group 2 boilers, pursuant to this section of the Act. Such comments should include both the format of the cost which should be addressed (e.g., capital cost, cost per unit of power, cost-effectiveness) and the procedure for

[11] See footnote 9.

[12] Consistent with the Appendix B methodology, boilers employing low NO_X burner technology installed prior to passage of the Act were not considered.

calculating the cost (e.g., data sources, mathematics, unit size constraints etc.).

Based on the above-discussed statutory language and legislative history, EPA maintains that it is reasonable to interpret the cost-comparability provision to require that the distribution of costs per ton of NO_X removed for the Group 2 control technologies be similar, but not necessarily equal, to the distribution of costs per ton of NO_X removed for low NO_X burners as applied to Group 1 boilers.

Third, in Section III.E, EPA estimated the change in electricity rates for consumers resulting from cost (in mills per kilowatt-hour) associated with application of NO_X controls on Group 2 boilers. The Agency maintains that it is reasonable to interpret the required consideration of ''costs and energy * * * impacts'' under section 407(b)(2) to involve the determination of the resulting effect of Group 2 boiler NO_X controls on electricity consumers. 42 U.S.C. 7651f (b)(2). In order to put the energy impact in perspective, EPA determined the average percent change in electricity rates experienced by consumers being served by utilities using Group 2 boilers due to the establishment of emission limitations on Group 2 boilers. This value was then compared to the percent change in nationwide electricity rates due to the establishment of emission limitations for LNBs on Group 1 boilers.

Fourth, in Section III.F, EPA assessed the performance of each cost-comparable Group 2 control technology. The assessment was based on data from industry and government sources on the size of NO_X emission reductions achievable using the control technology on the appropriate type of Group 2 boiler. Based on this data, EPA determined the percentage NO_X emission reduction that is reasonably expected to be achieved.

The expected performance of the control technologies was considered in setting an emission limitation for the relevant boiler type unless EPA determined that, where a technology's performance was expected to be significantly inferior to that of another appropriate technology, the less effective technology was not ''the best system of continuous emission reduction.'' 42 U.S.C. 7651f (b)(2). EPA applied each technology's expected reduction percentage to data on the uncontrolled emissions of each boiler that is in the particular category of Group 2 boilers and that will be subject to the Group 2 emission limitation. It was then determined what percentages of that boiler population will be able to achieve, on an individual boiler basis, a given set of possible NO_X emission limitations. The emission limitation that will be achievable by approximately 90 to 95% of the boiler population was selected as the emission limitation for that category of Group 2 boiler.

EPA chose to base the emission limitation on the emission rate that a target of about 95% of the population will be able to meet. This approach is more relaxed than that used in revising the Group 1 emission limitations because there is less data available on Group 2 boiler NO_X controls. The approach, however, is analogous to the approach used in setting NO_X emission limitations under section 407(b)(1) for Phase I, Group 1 boilers. The same options (averaging and alternative emission limitations) providing compliance flexibility for Phase I, Group 1 boilers unable to meet emission limitations on an individual boiler basis are available for all boilers under today's rule. EPA, however, solicits comment whether the approach being used for setting emission limitations for Group 2 boilers should be consistent with that being used in revising Group 1 emission limitations.

The Agency also assessed the total amount of NO_X emission reductions that may potentially be achieved through use of each available, cost-comparable Group 2 control technology. The change in levels of other pollutants that may result from such reductions were also evaluated. This is a reasonable implementation of the requirement under section 407(b)(2) that the Administrator take account of the environmental impact of Group 2 control technologies.

Finally, after weighing the projected performance and energy and environmental impacts of each available cost-comparable Group 2 control technology, EPA established NO_X emission limitations for Group 2 boiler types based on the appropriate control technologies.

E. Characterization of Costs

1. Low NO_X Burners Applied to Group 1 Boilers

Determination of the cost per ton of NO_X removed for the Phase I low NO_X burners was based on the cost data reported to EPA by 30 Group 1 units [13] (22 wall-fired and 8 tangentially fired boilers). The reported capital costs ($/kW) were analyzed incorporating cost savings due to multiple retrofits at one plant. The resulting cost functions ($/kW vs. MWe) were then levelized and added to estimated annual operating and maintenance costs to arrive at total levelized costs functions (mills/kWh vs. MWe). In arriving at these total costs, the following assumptions were used: (1) a standard capital carrying charge of 11.5%, (2) plant life of 20 years, and (3) a standard operation and maintenance (O&M) cost, including fixed O&M cost of 1.5% [14] of the installed capital cost for annual maintenance and a variable O&M cost accounting for a 0.27% loss in thermal efficiency for retrofit of LNB on wall-fired boilers only. Further, tons of NO_X removed were calculated for each boiler using the correlation between NO_X reduction (percent) and uncontrolled NO_X emission rate (lb/mmBtu). Finally, a cost-effectiveness equation, as a function of uncontrolled NO_X emission rate and capacity factor, was derived for the Group 1 LNBs. Note that all cost functions were computed in 1990 dollars in order to allow comparison of Group 1 and Group 2 control costs using dollars as of the enactment of the Clean Air Act Amendments of 1990. Details of obtaining cost-effectiveness functions for Group 1 LNBs can be found in (see docket items II–A–11, Capital and Annualized Costs of Low NO_X Burner Technology Applied to Phase I, Group 1 Boilers; and II–A–12, Distributions of Cost Effectiveness by Technology) and in EPA's Regulatory Impact Analysis (see docket item II–F–2) of this proposed regulation.

The cost-effectiveness function was then applied to each boiler in the Group 1 population that was above 0.45 lb/mmBtu, for tangentially fired boilers, or above 0.50 lb/mmBtu, for wall-fired boilers, taking into account each boiler's actual usage and uncontrolled NO_X emission rate. Figure 3 shows the distribution of costs that the Group 1 boiler population experiences when applying LNBs.

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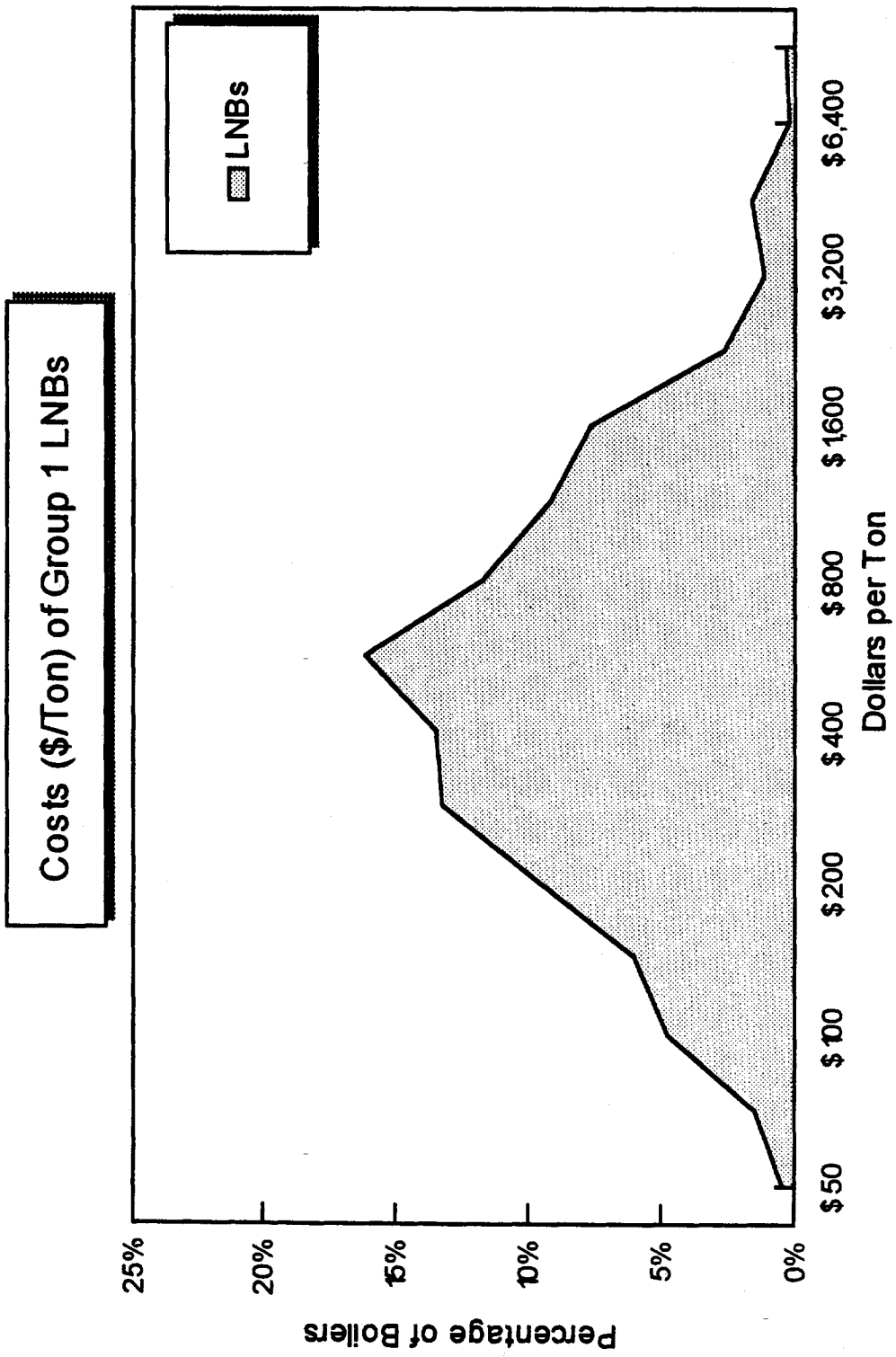
[13] A utility that wishes to submit cost information to augment EPA's analysis should use EPA Form 76B–26, titled NO_X Control Costs for Group 1, Phase I Boilers.

[14] EPA seeks comment on its use of assuming fixed O&M cost of 1.5% or using actual data as reported.

Figure 3



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2. NO_X Controls Applied to Group 2 Boilers

With regard to the cost per ton of NO_X removed for each Group 2 control technology, EPA used the following procedure. Models for Group 2 boiler type/available NO_X control technology combinations were created using information obtained from site visits to Group 2 boilers applying NO_X controls, a major A&E firm's boiler database, commercial applications, and published literature. EPA seeks comment on the accuracy of this data and requests additional data. Using information from the above sources, capital costs were estimated for these models. Subsequently, using the same approach and assumptions used in the levelization of Group 1 LNB costs, cost-effectiveness equations as a function of uncontrolled NO_X emission rate and capacity factor were obtained for each Group 2 boiler type/available NO_X control technology combination. This cost analysis used a modified EPRI class II approach (see docket item II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, p. 4–3). The details of estimates of costs of Group 2 boiler NO_X controls can be found in (see docket item II–A–2, Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers, p. 4–1 to 4–40) and in EPA's RIA (see docket item II–F–2).

The capital costs developed for each technology case reflect costs of retrofitting these technologies under expected site conditions at typical Group 2 boiler installations.[15] The following steps were taken to ensure that the retrofit nature of these costs are properly represented:

- A detailed equipment list was developed for each technology application. This list identified all major new equipment as well as modifications required to the existing plant equipment.
- In developing the various cost estimates, allowances were made for dismantling and removal of unwanted equipment.
- Contingency allowances were provided to cover cost increases associated with uncertain site factors and to cover any unexpected costs associated with retrofitting of large equipment.
- In developing cost estimates for each technology, costs associated with non-standard (i.e., non-essential, or special case) modifications to the existing plant equipment were also accounted for.

As a check, the costs thus developed were also compared and ensured to be consistent with those incurred at existing demonstration or commercial retrofits. It is important to note that retrofits at demonstration projects are not necessarily the easiest possible ones. For example, as noted in docket items II–D–28: Response to questions regarding application of selective catalytic reduction (SCR) to wet-bottom boilers, and to Public Service of New Hampshire's Merrimack 2 unit and II–B–6: Trip Report: visit to Merrimack Unit 2, SCR Retrofit, Merrimack Generating Station, Bow, New Hampshire, June 14, 1995, the SCR application at Merrimack 2 required significant ductwork.

The cost-effectiveness equations for Group 2 boiler/ available NO_X control technology combinations were then applied to each boiler of the appropriate boiler population to arrive at cost-effectiveness distributions for Group 2 boiler NO_X controls. In performing these computations, EPA assumed that only those boilers with NO_X emission rates above the applicable emission limits would install technology. This assumption was made in order to provide a more realistic picture of the cost-effectiveness distributions. The details on the procedure for obtaining cost-effectiveness distributions can be found in EPA's RIA.

3. Comparison of Group 2 Boiler NO_X Control Costs to Low NO_X Burner Costs

As discussed above, in order to determine whether NO_X control technologies as applied to Group 2 boilers are comparable in cost to low NO_X burners as applied to Group 1 boilers, EPA determined the cost-effectiveness of each of the NO_X control technologies applied to each boiler in the respective boiler populations. In determining each boiler/control technology cost-effectiveness distribution, EPA used each boiler's actual usage and uncontrolled NO_X emissions. Additionally, since in today's proposal EPA is exempting cyclone boilers below 80 MWe, the exempted boilers are excluded from the cost effectiveness distributions. Next, the distribution of overall cost-effectiveness for Group 2 boiler NO_X controls was compared to the distribution of overall cost-effectiveness for Group 1 LNBs (see Figure 3). Figure 4 illustrates this comparison.

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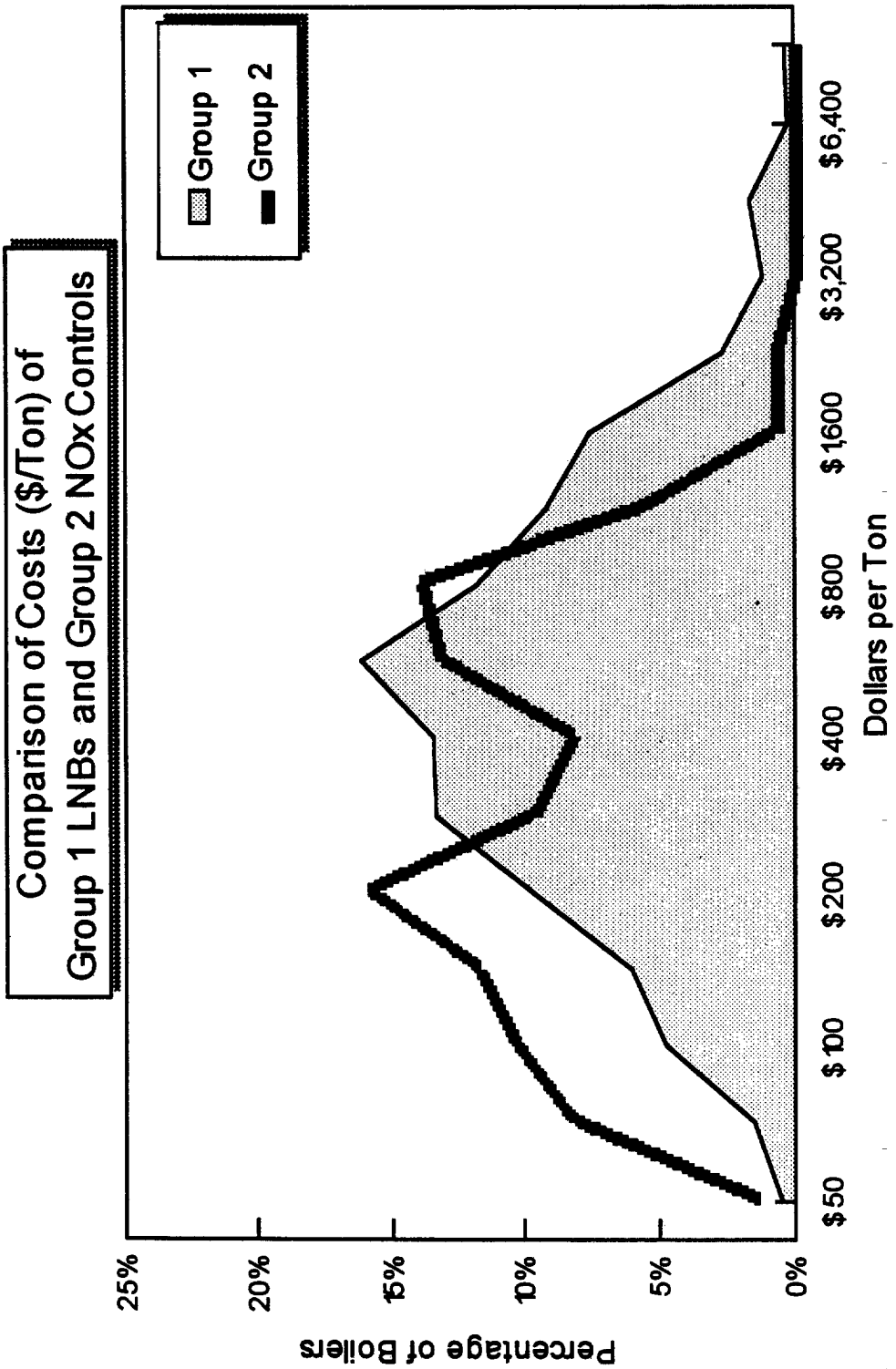
[15] For example, in the SCR analysis EPA assumed a catalyst space velocity equal to 4,900 hr^{-1} for achieving a 50% NO_X reduction.

Figure 4



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The upper and lower 10 percent of each distribution shown in Figure 4 were then excluded in order to compare each distribution without the influence of outliers. EPA determined that the costs for LNBs applied to Group 1 boilers (with outliers removed) ranged from $121/ton to $1,264/ton. The Group 2 NO_X control costs (with outliers removed) ranged from $71/ton to $710/ton. These ranges, tabulated in Table 16, indicate that, excluding outlier, Group 2 boilers applying NO_X controls will experience costs within the range of costs experienced by Group 1 boilers applying LNBs.

Further, EPA determined the range in costs resulting from the application of each available NO_X control technology on each Group 2 boiler type and LNB application on each Group 1 boiler type separately. Subsequently, to provide additional support for cost comparisons, the individual Group 2 boiler/NO_X control technology cost distributions were compared to the Group 1 boilers cost distribution. Table 16 characterizes these cost distributions and the percentage of each Group 2 boiler type population that are expected to experience costs within the range of costs experienced by Group 1 boilers applying LNBs.

TABLE 16.—DISTRIBUTION OF COST-EFFECTIVENESS OF NO_X CONTROLS ($/TON NO_X REMOVED)

Boiler/NO_X control technology	10th percentile	90th percentile	Median	Percent boilers below group 1 90th percentile cost
Group 1/LNBs	121	1264	403	NA
Group 2/NO_X Controls	71	710	207	100
Cell Burners/Plug-ins	57	179	103	100
Cell Burners/Non Plug-ins	75	228	129	100
Cyclones/Coal Reburning	311	897	492	100
Cyclones/Gas Reburning	371	728	555	100
Cyclones/SCR	379	895	574	100
Cyclones/SNCR	426	854	635	100
Wet Bottoms/Combustion Controls	51	148	73	100
Wet Bottoms/SNCR	356	779	458	100
Verticals/Combustion Controls	126	688	196	100
Verticals/SNCR	651	1,400	831	79
FBCs/Combustion Controls	0	0	0	100

With one exception, each Group 2 boiler/NO_X control technology combination experienced costs within the range of costs for Group 1 boilers applying LNBs. After examining the cost comparisons presented in this section, EPA determined that the following Group 2 boiler/NO_X control technology combinations are comparable in cost to Group 1 LNBs:

- Cell burner boilers applying either plug-in or non-plug-in combustion controls.
- Cyclone boilers applying coal reburning, gas reburning, SCR, or SNCR.
- Wet bottom boilers applying combustion controls or SNCR.
- Vertically fired boilers applying combustion controls.
- FBC boilers applying combustion controls.

As discussed below, DOE prepared an independent analysis concerning cyclone boilers, based on different assumptions and data than those used by EPA (see docket item II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995). In this analysis, DOE data for existing applications of LNBs were used to project compliance costs for Group 1 boilers and the results were compared to DOE's projections of cost and performance estimates for SCR and other technologies for controlling NO_X emissions from cyclone boilers. Based on these comparisons, DOE concluded that both cost per unit of electricity generated and cost-effectiveness of controls for cyclone boilers appear to be several times that of LNBs for Group 1 boilers (see docket item II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995). EPA requests comment on this analysis.

In its development of costs for the application of gas reburning on cyclone boilers, EPA used a gas-coal price differential of § 1.23/ mmBtu (1990 dollars). EPA believes that this price differential is similar to recent projections for the year 2010. However, the cost of gas reburning is very sensitive to the gas-coal price differential assumed in the analysis. If a differential of $1.00/mmBtu were assumed, the cost-effectiveness would range from $295 to $588 per ton NO_X removed. Similarly, if a differential of $2.00/mmBtu were assumed, the cost-effectiveness would range from $617 to $1,200 per ton NO_X removed. EPA solicits comment on the gas-coal price differential used in the cost analysis of gas reburning.

Although EPA has not presented gas reburning applied to wet bottom boilers, other than cyclones, in the above analysis, EPA is soliciting comment on whether this NO_X control technology as applied to this boiler type is comparable in cost to low NO_X burner technology and meets the requirements under section 407 (b)(2).

EPA also assessed the energy impacts of Group 2 NO_X controls by determining the average percent change in electricity rates experienced by consumers that are served by utilities operating Group 2 boilers due to the establishment of emission limitations for Group 2 boilers. The energy impact was an estimated 0.35 % increase in electricity rates. EPA then determined the percent change in electricity rates that the same consumers would experience due to the establishment of emission limitations for LNBs on Group 1 boilers. The energy impact due to the Group 1 controls was an estimated 0.36 % increase in electricity rates. Comparing these two values, the energy impacts of Group 2 controls are slightly less than the energy impacts of Group 1 LNBs. (Values were derived assuming an average cost of generating electricity equal to 40 mills/kWh.) This factor was weighed, along with the other factors required to be considered used section 407(b)(2), in deciding what emission limitation to establish for each Group 2 boiler category.

F. Emission Limits for Group 2 Boilers

1. Cell Burner Boilers

Performance of NO_X Controls. Because plug-in and non plug-in NO_X combustion controls, applied to cell-burner boilers, meet the cost-comparability requirement, the performance of these controls is assessed to determine what performance standards are achievable. Table 17 shows various measurements and estimates of the percentage reduction and controlled emission rates for plug-in and non plug-in NO_X controls on cell burner boilers.

TABLE 17.—NO_X REDUCTION PERFORMANCE FOR AVAILABLE NO_X CONTROLS

Source	NO_X control for cell-burner boilers			
	Plug-in		Non plug-in	
	Percent reduction	Controlled emission rate (lb/mmBtu)	Percent reduction	Controlled emission rate (lb/mmBtu)
ETS Data:				
J.M. Stuart #4	52	0.523 [16]		
Muskingum #5	52	0.541 [16]		
Retrofit Applications:				
Muskingum #5 (585 MWe)	>50	0.59 [17]		
Stuart #4 (605 MWe)	>50	<0.58 [17]		
Hatfield's Ferry #2 (555 MWe)	50	0.58 [17]		
Monroe #1 (780 MWe)	44	0.52 [17]		
Sammis #6 (630 MWe)			65 (long term)	0.32–0.47
Four Corners #4 (760 MWe)			40–58 (>70 of MCR [18])	0.49 (MCR)
Brayton Point #3 (500 MWe)			70 (target)	NA
DOE	50	NA	35–70 (LNB + OFA)	NA
EPRI	40–53	NA	NA	NA
UARG	44–50 (short term) 50 (long term)	NA	NA	NA

ETS data shown in the above table suggest that plug-in controls on cell burner boilers can achieve 52% NO_X reduction from full-load, over the long term. Non-plug-in burners, which essentially convert the cell burner boiler to a conventional wall-fired boiler, are expected to reduce NO_X by over 50%, as illustrated in the above table. Boilers that retrofit this NO_X control technology become conventional wall-fired boilers and can therefore emit at NO_X levels below 0.45 lb/mmBtu (see section II). However, EPA has chosen to base the NO_X emission limitations on 50% NO_X reduction. This conservative approach is taken because there are only two boilers for which ETS data are available and because, as shown in the above table, data from all but one of the commercial applications and the bulk of information from industry representatives and DOE suggest that overall, 50% NO_X reduction is attainable by plug-in burners.

As shown in Table 17, the controlled emission rates obtained from ETS are lower than the rates reported in literature for Stuart Unit #4 and Muskingum River Unit #5. This is a result of ETS data being long-term as opposed to short-term full-load data that is the source of the values reported in literature.

Industry commenters were concerned that cell burner boilers retrofit with plug-in burners would have problems sustaining a certain NO_X emission rate over the course of a year. EPA has been informed by the owner/operator of Muskingum River #5 that since the beginning of 1995, the boiler switched to firing low sulfur compliance coal without re-optimizing the coal/air feed system. This caused flame detachment at the burner, thereby increasing the NO_X emissions to ~0.7 lb/mmBtu. EPA believes that once this boiler is re-optimized for the new coal, the NO_X emissions will decrease to previous levels. The owner/operator of Stuart #4 informed EPA that this unit's NO_X emissions increased in the Fall of 1994 and decreased again to original levels after the Winter of 1994. EPA believes this may be a result of coal composition temporarily influencing the NO_X emissions; this condition may therefore be corrected with boiler re-optimization.

Achievable Emission Limit. Applying the projected 50% emission reduction to the uncontrolled emissions of each boiler in the cell-burner population for which NO_X limits are to be set under section 407(b)(2), EPA determined how many of the boilers could achieve various NO_X performance standards. The following table shows the NO_X performance standards levels achievable by between 88.9% and 100% of that cell-burner population.

TABLE 18

NO_X level (lb/mmBtu)	Number of boilers meeting NO_X level	Percent of boilers meeting NO_X level
0.79	35	100
0.73	34	97.1
0.68	33	94.3
0.67	32	91.4
0.65	31	88.6

Table 18 indicates that 94% of the 36 cell burner boilers can achieve a NO_X controlled emission rate of 0.68 lb/mmBtu.

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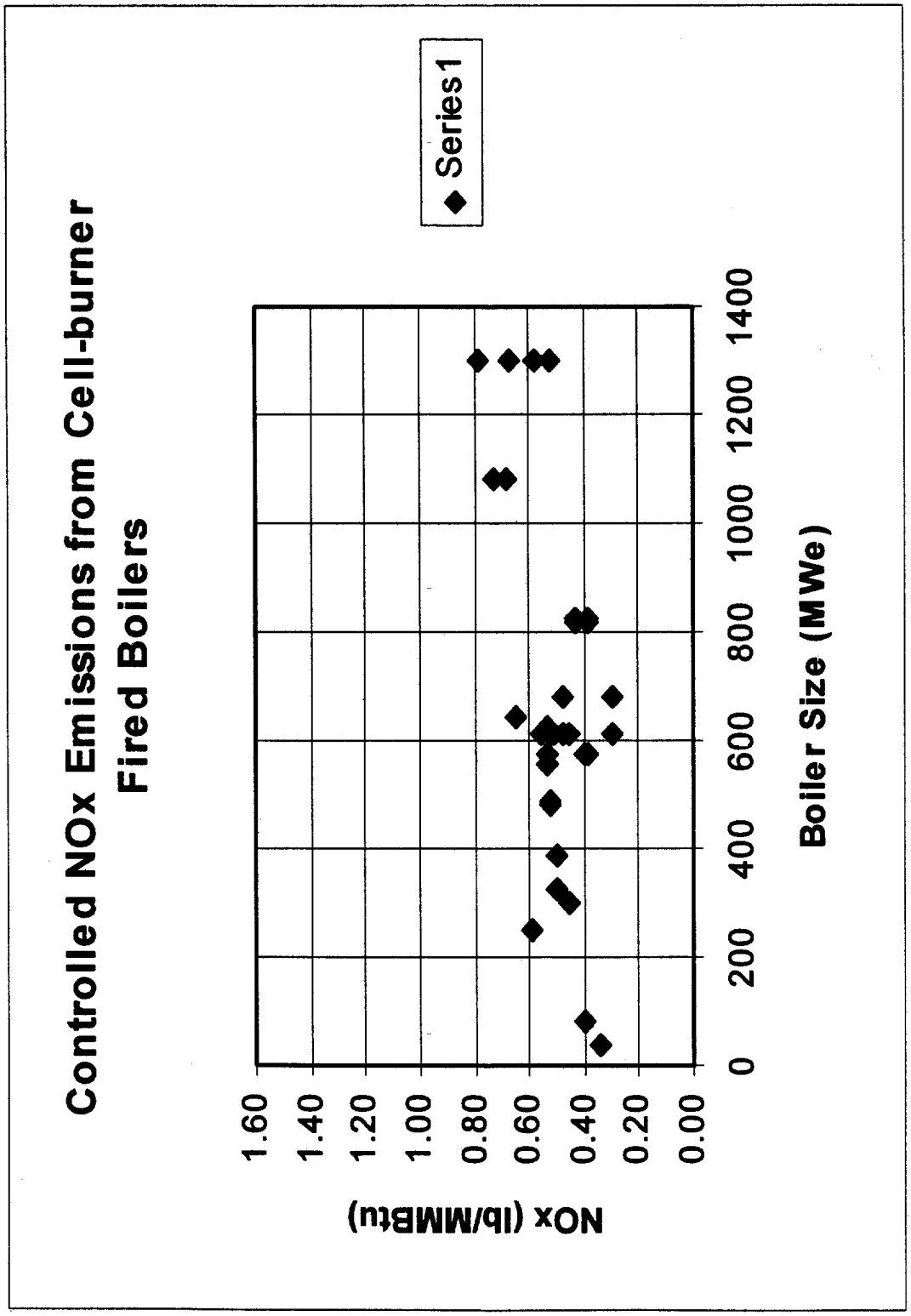
[16] Best 52-day controlled NO_X emission rate, determined per methodology outlined in Section II.

[17] Full load short-term test.

[18] MCR is the maximum continuous rating of a boiler

Figure 5



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Note that the proposed emission limit is greater than the controlled emission rates shown in Table 17. EPA has calculated the uncontrolled emission rates of cell burner boilers to be as high as 1.57 lb/mmBtu and on average 1.02 lb/mmBtu. The boilers shown in Table 17 (JM Stuart #4 at 1.11 lb/mmBtu and Muskingum River #5 at 1.12 lb/mmBtu), though having uncontrolled emissions above the mean emission rate of the cell burner population, are significantly lower than the uncontrolled emission rates of some boilers. Since, as illustrated in Figure 5, the emission limit is based on approximately 95% of the population meeting it, the effect of the higher emitting boilers drives the emission limit towards the high end of the controlled emissions distribution.

Environmental Impacts. According to EPA's Regulatory Impact Analysis, the establishment of 0.68 lb/mmBtu as the emission limit for cell burner boilers will result in a total NO_X emissions reduction of 284,000 tons per year. As shown in the EPA's technical support document, these reductions will be achieved without increases in other air pollutants such as CO or SO_2. In fact, applications to date show a decrease in particulates by as much as 50% as a result of plug-in and non-plug-in retrofits on cell burner boilers.

Additionally, in applications to date, there have been no increases in unburned carbon (UBC) with the application of plug-ins on cell burner boilers. For boilers with non plug-in retrofits, an increase in UBC has been observed. This increase is similar to, or lower than, increases in UBC observed in dry bottom wall-fired boilers retrofitting LNBs. Additionally, the EPA has identified vendors of technology that lowers unburned carbon levels from boilers by optimizing the combustion process (see docket item II–D–15). Further, one vendor provides technology that removes unburned carbon from the flyash (see docket item II–D–13). This process splits the flyash into two parts, one high in carbon and one very low in carbon. The high carbon flyash can be re-combusted in the boiler, while the low carbon flyash can be sold to cement companies. The economic impact of installing such technologies is negligible, compared to the benefits of selling flyash and not needing to dispose of it.

Issues Raised. Applicable Emission Limit. EPA investigated whether boiler operating conditions after January 1, 1995 affected the controlled NO_X emission rate, using CEM measured data submitted to EPA's Emissions Tracking System (ETS). To date, no substantial differences between NO_X emission rates before and after January 1, 1995, have been observed. EPA believes that the utilities can receive NO_X emission guarantees for various coal types from manufacturers of NO_X control equipment. The manufacturers of control equipment appear to design for a certain controlled NO_X emission rate taking into account various coal types.

Increased Boiler Corrosion. EPA also investigated whether the application of combustion NO_X controls on cell burner boilers would cause corrosion or erosion of furnace walls. These impacts could affect costs associated with such retrofits. However, major vendors of plug-in and non plug-in combustion controls on cell burners (Babcock & Wilcox and Riley Stoker), as well as utilities, have not found significant corrosion and erosion problems associated with applications of this technology to date.

Conclusions. For the following reasons, EPA concludes that 0.68 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). First, plug-in burners applied to cell burner boilers are an available control technology that meets the cost-comparability requirement. Second, a second available control technology, non plug-in retrofits, also meets the cost-comparability requirement. This technology can be applied to 3-cell configurations if plug-ins are not effective. Because it is capable of greater NO_X reduction efficiency than plug-ins, it can meet the 0.68 lb/mmBtu emission limit. Third, an emission limit of 0.68 lb/mmBtu is achievable in that it can be met by 94% of the cell burner population with the application of plug-in or non plug-in burners at a 50% NO_X removal efficiency. ETS data for two cell-burner boilers that have already installed such controls were at or below this limit 94% of the time they were operated. Fourth, as shown in section III.E, the energy impact, i.e. the cost impact on electricity consumers, of using the available control technologies to meet the recommended emission limit is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. Finally, the recommended emission limit results in a reduction of NO_X emissions by approximately 284,000 tons per year (see Regulatory Impact Analysis, docket item II–F–2) without increases in CO, CO_2, SO_2, or solid waste and with potentially a 50% decrease in particulates. As discussed in section II.D, there are substantial human health and environmental benefits associated with the additional NO_X reductions and meeting the proposed emission limitation is a cost-effective means of achieving such reductions.

2. Cyclone Boilers

Performance of NO_X Controls. Four NO_X control technologies that are available for application to cyclone boilers meet the cost comparability requirement: (1) Coal reburning, (2) gas reburning, (3) SCR, and (4) SNCR. Since EPA must base the emission limitation on the ''best system of continuous emission reduction'' per section 407(b)(1), and as shown in the Technical Support Document, the expected NO_X removal capability of SNCR is approximately 35%, lower than the percent reduction of the other technologies available for cyclone boilers, EPA is not considering SNCR in establishing the emission limitation for cyclone boilers.

Table 19 shows measurements and various estimates of the percent reduction and controlled emission rates for coal reburning, gas reburning, and SCR on cyclone boilers. EPA also believes that combustion control and combustion optimization approaches may also achieve cost-effective, significant NO_X reductions. However, these control approaches have not yet been thoroughly investigated by the utility community.

TABLE 19.—NO_X REDUCTION PERFORMANCE FOR AVAILABLE NO_X CONTROLS

Source	NO_X Control for cyclone boilers					
	Coal reburning		SCR		Gas reburning	
	Percent reduction	Controlled emission rate (lb/mmBtu)	Percent reduction	Controlled emission rate (lb/mmBtu)	Percent reduction	Controlled emission rate (lb/mmBtu)
Retrofit Applications:						
Nelson Dewey 2 (110 MWe).	52.4–55.4 (MCR)	0.34–0.39				
Merrimack 2 (320 MWe).			65 (target)	NA		
Niles 1 (108 MWe).					50 (long term)	0.58–0.67 (approx.)
Lakeside 7 (33 MWe).					66 (long term)	0.344
DOE	40–60 [19]	NA	80–90	NA	55–65	NA
EPRI (based on retrofits).	50–55 (MCR)	NA	65 (MCR, target)	NA	50–60 (MCR)	NA
UARG (based on retrofits).	55–60 (MCR), 33–50 (loads down to 35% MCR).	NA	65 (target)	NA	40 (long term, >75% MCR), 47% (MCR).52–77 (short term, >70% MCR).	NA

EPA believes that 50% NO_X reduction from full-load values can be achieved by coal reburning and SCR [20] controls over the long term. This represents the average of the range in performance expected by DOE. A 50% NO_X reduction is also on the conservative end of the performance range achieved over the long term at the only demonstration project, and is on the lower end of performance projections by utility groups.

Gas reburning is expected to reduce NO_X emissions by 60%. This value is about the average of the range of performance at the two existing gas reburning projects and the overall range of DOE and EPRI performance estimates. The lower reduction percentages suggested by UARG reflect boiler operation at lower than full loads.

Some industry commenters have expressed concerns that applications of coal or gas reburning on some cyclone boilers may not achieve 50% or 60% NO_X reductions, respectively. EPA solicits comment from vendors and utilities on the performance of these NO_X control technologies.

Additionally, information recently obtained by EPA from a utility that attempted to optimize the combustion process in cyclone boilers, shows that reductions in the order of 10%–20% can be achieved by optimizing fuel and air flows to cyclones. EPA solicits comment from vendors and utilities on the applicability of combustion modification and optimization techniques that lower NO_X emissions from cyclone boilers.

Achievable Emission Limit. For the purposes of applying a NO_X emission limitation to cyclone boilers, EPA chose 50%, a conservative reduction percentage considering the performance level of the three qualifying technologies. Applying the projected 50% emission reduction to the uncontrolled emissions of each boiler over 80 MWe in the cyclone population for which NO_X limits are to be set under section 407(b)(2), EPA determined how many of the boilers could achieve various NO_X emission levels. The following table shows the NO_X emission levels achievable by between 89.3% and 100% of the cyclone boiler population.

TABLE 20

NO_X level (lb/mmBtu)	Number of boilers meeting NO_X level	Percent of boilers meeting NO_X level
0.98	75	100
0.97	73	97.3
0.94	70	93.3
0.86	68	90.7
0.85	67	89.3

Table 20 indicates that 93% of the 75 cyclone boilers can achieve a NO_X controlled emissions rate of 0.94 lb/mmBtu.

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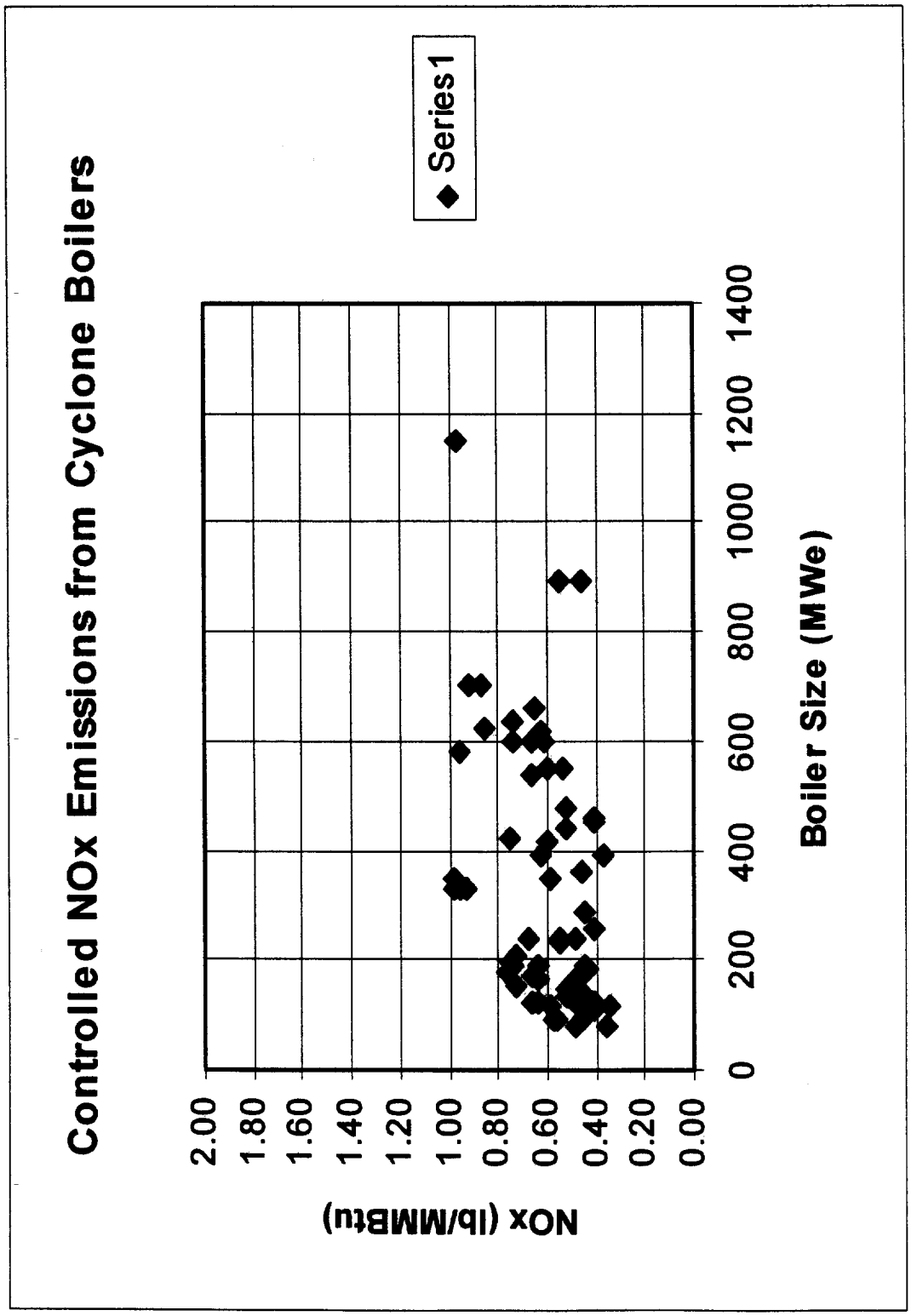
[19] This range reflects use of different coal types, specifically at Nelson Dewey 2, 55.4% NO_X reduction at 110 MWe using subbituminous coal and 35.8% NO_X reduction at 60 MWe using bituminous coal.

Figure 6



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Note that the proposed emission limit is greater than the controlled emission rates shown in Table 19. The boilers shown in Table 19 have uncontrolled emissions significantly lower than the uncontrolled emission rates of some boilers. Since, as illustrated in Figure 6, the emission limit is based on approximately 95% of the population meeting it, the effect of the higher emitting boilers drives the emission limit towards the high end of the controlled emissions distribution.

Environmental Impacts. According to EPA's Regulatory Impact Analysis, the establishment of 0.94 lb/mmBtu as the emission limitation for cyclone boilers will result in additional NO_X emissions reductions of approximately 167,000 tons per year. These reductions are achieved with little or no increases in other air pollutants or solid waste. In fact, when applying gas reburning, significant SO_2 and CO_2 emission reductions are also achieved.

Issues Raised. Applicability of Reburning. Some concern has been expressed regarding the ability of some cyclone boilers to retrofit gas or coal reburning; of particular concern are smaller boilers. EPA investigated whether the retrofit of both coal and gas reburning may be infeasible for some small boilers. According to Babcock & Wilcox, the only vendor for both cyclone boilers and coal reburning, many boilers less than 80 MWe may not be able to effectively retrofit reburning. Since there appears to be great concern regarding the reburning retrofitability of small boilers and since their combined NO_X emissions (in tons) account for only about 10,000 tons out of about 1.8 million tons of total annual uncontrolled NO_X emissions from units with Group 2 boilers, today's proposal exempts cyclones less than 80 MWe from this rulemaking.

EPA is also asked to exempt large cyclone boilers due to uncertainties concerning the ''scaling up'' of reburning technology from small to large boilers. Some utilities are concerned that since large boilers have greater furnace volumes, the reburning fuel will not be able to mix adequately with the flue gas and therefore, the NO_X reduction will be significantly less than the expected 50%.

The feasibility of reburning on any boiler depends on the following requirements: (1) The availability of adequate residence time in the reburn and burnout zones; (2) the mixing of reburn fuel and overfire air; and (3) the ability to achieve penetration of reburn fuel into combustion gas across the distances associated with large units.

It has been shown in a survey (see docket item II–I–22, Final Report, Demonstration of Coal Reburning for Cyclone Boiler NO_X Control, prepared by Babcock and Wilcox for the Department of Energy, DOE/PC/89659–T16, February 1994, pp. 2–7 and 2–8) that majority of the boilers had the requisite residence time available for coal reburning. Further, gas reburning applications require less residence times than corresponding coal reburning applications. Thus, in general, most of the cyclones have adequate residence times available for applications of either coal or gas reburning. However, natural gas may not be available at all cyclone boiler locations. EPA solicits comment on what cyclone boilers do not have access to natural gas.

Combustion gas flow patterns in relatively larger boilers are expected to be less complex than those found in smaller units. Thus general mixing of reburn fuel and combustion gas would be expected to be better in larger boilers.

Penetration of reburn fuel into combustion gas does depend on the distance between the front and rear walls of a boiler. However, with proper design of reburn fuel burners/injectors, the requisite penetration can be achieved.

Additionally, EPA believes that though all reburn demonstrations in the U.S. have been on relatively small boilers (about 100 MWe), a 300 MWe boiler in the Ukraine has been successfully retrofitted and operated with gas reburn by a large U.S. manufacturer and is achieving 50% of NO_X reduction over the load range. Since no retrofit of reburning to date (including this 300 MWe boiler) has shown a long-term NO_X reduction lower than 50% from full-load values and NO_X emissions from large cyclone boilers are clearly not *de minimis*, EPA adopts 50% as the minimum removal capability of reburning. EPA also notes that SCR is available as an alternative NO_X control technology for cyclone boilers.

Applicability of Reburning at Low Loads. EPA has investigated the concern about the application of reburning at reduced boiler loads because this could affect slagging and NO_X reduction efficiency in the cyclone.

Utility representatives project that reburning will be inoperable at low boiler loads (less than 40% of full load) (see docket item II–E–10). EPA has investigated the actual hourly loads of 22 Phase I cyclone boilers and found that, collectively, they were at less than 40% of full load only 5% of the time in 1994. Further, the retrofit of coal reburning to Nelson Dewey Unit 2 achieved long-term NO_X reductions greater than 50% even though the reburning was stopped during periods when the cyclone was operating at loads lower than 40% of full load.

According to the manufacturer (see docket item II–I–90, Babcock & Wilcox, Steam: Its Generation and Use), individual cyclone furnaces cannot be operated below half load without causing freezing of slag. On smaller cyclone boilers, equipped with only a few cyclone furnaces, load reduction is achieved by turning down each of the individual furnaces. On these boilers, typical minimum operational load, in the absence of reburning, would be about 50 percent of the rated boiler capacity. With reburning providing 15–20 percent of total heat input, the minimum operational load for some small boilers could be about 58–60 percent of rated capacity. However, the situation is different for relatively larger cyclone boilers. Typically, these boilers are equipped with many cyclone furnaces. Load reduction on these cyclone boilers is achieved by removing individual cyclone furnaces from service. Depending on the number of individual cyclone furnaces taken out of service and the level of load reduction on each of the remaining furnaces, such a boiler could be operated over a wide range of loads. Hence, based on the proposed 80 MWe size cut-off, application of reburning on cyclone boilers should not be restricted by load considerations. Further, for those few units where load considerations restrict use of reburning, SCR is available as a cost effective NO_X control measure.

It is worth noting that gas reburning has been applied successfully at a small cyclone boiler (Lakeside Unit 7, 33 MWe). Long term NO_X reduction at this unit has been reported to be over 65 percent.

Applicability of Combustion Controls on Cyclone Boilers. EPA has identified two U.S. manufacturers that have combustion control approaches to controlling NO_X from cyclone boilers, and the performance and cost of such approaches appear to be very promising. Although these staged combustion systems appear promising, they have not yet been demonstrated. In addition, cyclones may be able to be ''optimized'' for NO_X emission reduction without the addition of controls. A major utility has done such work in the past achieving 10–20% reductions by changing the air/fuel ratios. The same utility also intends to examine combustion modification controls. Modeling will be completed this year, and demonstration projects will be underway in 1996. Combined with emission reductions from fuel

changes, total emission reductions of 20 to 40% from 1990 baseline levels are anticipated. EPA calculates that if cyclone owners successfully apply combustion optimization techniques, more than 50% of the affected units would meet the 0.94 lb/mmBtu emission limit at dramatically reduced costs. EPA is not basing its proposed emission limitation for cyclone boilers on combustion optimization because there is currently inadequate information to conclude that it is an available technology under section 407 (b)(2) for cyclone boilers.

Cost Comparability of Available Cyclone Boiler NO_X Controls. EPA recognizes that some industry commenters believe that the available NO_X control technologies for cyclone boilers are not comparable in cost, on a dollars per ton of NO_X removed basis, to low NO_X burners applied to Group 1 boilers. Although EPA is proposing that there are NO_X control technologies available for cyclone boilers that are comparable in cost to low NO_X burners applied to Group 1 boilers, the Agency stresses that it will welcome, and fully consider in the final rule, any additional data or other information relevant to the issue of cost comparability. For the same reasons (discussed above) that EPA is not delaying the proposed revised limitations for Phase II, Group 1 units, EPA is today proposing emission limitations for cyclone and other Group 2 boilers, based on what it believes is a sufficient record. An analysis by DOE, based on different assumptions and data than those used by EPA and including information which has not been verified by EPA, concludes that the average cost-effectiveness of LNB technology for Group 1 boilers is $260 per ton, and that the corresponding cost effectiveness for SCR applied to cyclone boilers is $830 per ton [21] (see docket item II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995. pp. 2–12). If EPA determines that this analysis is appropriate and this degree of difference is deemed to not be ''comparable'' for purposes of setting a Group 2 standard, and if coal or gas reburning also do not meet the cost comparability requirements, then no standard would be promulgated for cyclone boilers, unless more cost-effective control technology is identified during the comment period for this rule.

EPA is specifically requesting comment on the adequacy of the data as to its accuracy and completeness to (1) support an emission limitation of 0.94 lb/mmBtu for cyclone boilers or (2) to support not establishing an emission limit for cyclone boilers at this time. EPA requests (a) data and analysis on the cost and performance of Group 1 low-NO_X burner control technologies and (b) cost and performance data for demonstrated NO_X control technologies for cyclone boilers including but not limited to coal reburn, gas reburn, SCR, SNCR or other NO_X control technologies. EPA also seeks information which might suggest a size cutoff or groupings for cyclone boilers to be controlled by each of these technologies and analysis supporting this recommendation. As noted below, EPA's view of available information indicates that technology to reduce NO_X emissions from cyclone boilers is comparable to the cost of low NO_X burners for Group 1 boilers. However, analysis provided by DOE, based on different assumptions and data, indicates that the cost of control technology for cyclone boilers is several times higher than the cost of LNB for Group 1 boilers (see docket item II–D–62, Analysis of Proposed Section 407(b)(2) NO_X Rule, Department of Energy, Staff Paper, December 14, 1995.). EPA also requests comments and recommendations on these two analytical approaches.

Conclusions. For the following reasons, EPA concludes that 0.94 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). First, coal reburning, gas reburning and SCR applied to cyclone boilers are available technologies that meet the cost-comparability requirement. Second, the proposed emission limit of 0.94 lb/mmBtu is an achievable emission level that 93% of the cyclone boiler population will be able to meet with the application of coal reburning, gas reburning, or SCR. Third, as shown in section III.E, the cost impact on electricity consumers of using these control technologies to meet recommended emission limit is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. Finally, the recommended emission limit results in a reduction of NO_X emissions by approximately 167,000 tons per year with little or no increases in other air pollutants or solid waste disposal. As discussed in section II.D, there are substantial human health and environmental benefits associated with the additional NO_X reductions and meeting the proposed emission limitation is a cost-effective means of achieving such reductions.

3. Wet Bottom Boilers

Performance. Because combustion NO_X controls meet the cost-comparability requirement, the performance of these controls is assessed to determine what performance standards are achievable. Though SNCR also meets the comparability criteria, at a typical 35% NO_X reduction it is not the ''best system of continuous emission reduction'' per section 407(b)(2) available for wet bottom boilers, and as such, is not considered when setting emission limits for wet bottom boilers.

Combustion controls have not yet been applied to wet bottom boilers in the U.S. However, a major utility has announced plans to retrofit a wet bottom wall-fired boiler in the fall of 1995 with combustion controls, specifically a two-level overfire air (OFA) system. According to the utility's engineering estimates, the two-level OFA system will achieve an overall 50% reduction from uncontrolled levels and will allow the wet bottom boiler to have a NO_X emission rate of 0.71 lb/mmBtu (see docket items II–D–30: J.M. McManus, American Electric Power Service Corporation, to L. Kertcher, EPA: Acid Rain Division, May 26, 1995, Enclosing information relating to Kyger Creek Unit 5 low NO_X System Design; II–B–7: Trip Report: visit to Kyger Creek Unit 5 Low NO_X Combustion Modification Retrofit; and II–A–2: Investigation of Performance and Cost of NO_X Controls as Applied to Group 2 Boilers at p. 3–18 & 3–19).

Based on the above project's projected performance, EPA projects that combustion controls applied to wet bottom boilers can achieve a 50% reduction of NO_X emissions from uncontrolled levels. EPA notes the control technology on which it is based, OFA, has been widely used in the electric utility industry as a NO_X control technology for other types of boilers for many years (57 FR 55640).

Achievable Emission Limit. Applying the projected 50% emission reduction to the uncontrolled NO_X emissions of each boiler in the wet-bottom burner population for which NO_X limits are to be set under section 407(b)(2), EPA determined how many of the boilers could achieve various NO_X performance standards. The following table shows the NO_X performance standards achievable by between 89.7% and 100% of the wet bottom boiler population.

[20] Of the three technologies, SCR allows the user to design for various levels of performance ranging as high as 90% NO_X reduction. However, increases in performance are directly proportional to increases in cost. For the purposes of this rule, and to more accurately compare SCR with coal and gas reburning, the NO_X reduction performance of SCR is set at 50%.

TABLE 21

NO_X level (lb/mmBtu)	Number of boilers meeting NO_X level	Percent boilers meeting NO_X level
0.95	38	100
0.86	37	97.4
0.84	34	89.5

Table 21 indicates that 97% of the 39 wet bottom boilers can achieve a controlled NO_X emission rate of 0.86 lb/mmBtu.

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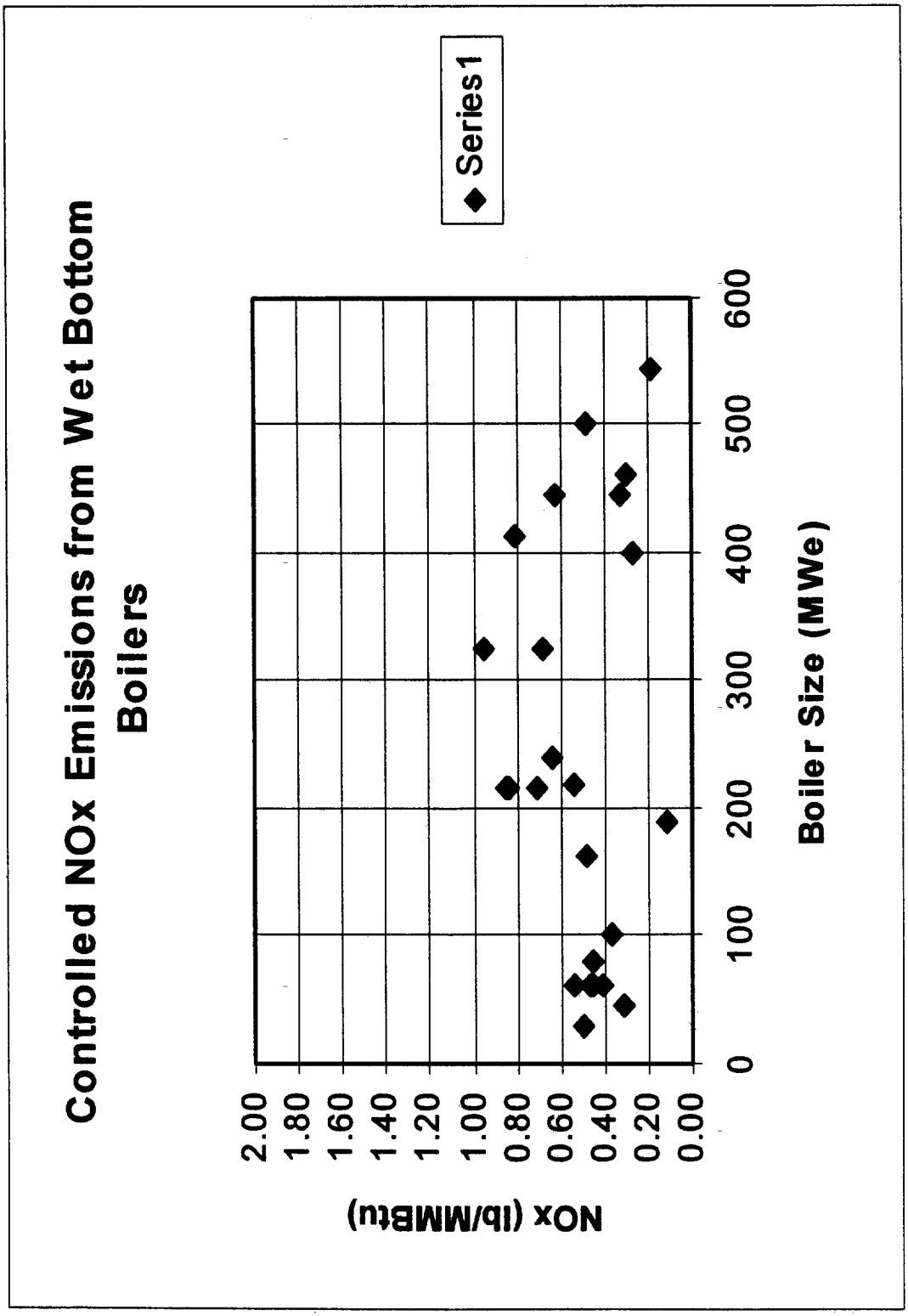
Figure 7



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Note that the proposed emission limit is greater than the controlled emission rate expected from Kyger Creek #5 (0.71 lb/mmBtu). EPA has calculated the uncontrolled emission rates of wet bottom boilers to be as high as 1.90 lb/mmBtu and on average 1.12 lb/mmBtu. Kyger Creek #5 (at 1.41 lb/mmBtu), though having uncontrolled emissions above the mean emission rate of the wet bottom boiler population, is lower than the uncontrolled emission rates of some boilers. Since, as illustrated in Figure 7, the emission limit is based on approximately 95% of the population meeting it, the effect of the higher emitting boilers drives the emission limit towards the high end of the controlled emissions distribution.

Environmental Impacts. According to the EPA's Regulatory Impact Analysis, the establishment of 0.86 lb/mmBtu as the emission limit for wet bottom boilers will result in a total NO_X emissions reduction of approximately 112,000 tons per year. These reductions will be achieved through the use of OFA, a form of combustion NO_X control technology. Since LNBs are also a form of combustion control technology, EPA expects the environmental and solid waste impacts of OFA on wet bottom boilers to be similar to the impacts of LNBs or OFA Group 1 boilers. The application of LNBs or OFA on Group 1 boilers does not increase levels of CO, SO_2, or CO_2 but may increase the unburned carbon (UBC) level in the flyash. For boilers that do experience increases in UBC from uncontrolled levels, technologies that lower UBC to below uncontrolled levels at very little or no cost are available (see section IV.D.1).

Conclusions. For the following reasons, EPA concludes that 0.86 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). First, combustion NO_X controls applied to wet bottom boilers are an available technology that meets the cost-comparability requirements. Second, an emission limit of 0.86 lb/mmBtu is a level that 97.4% of wet bottom boiler population should be able to meet with the application of combustion controls at 50% NO_X removal efficiency. Third, as shown in section III.E, the cost impact on electricity consumers of using this control technology to meet the recommended emission limit is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. Finally, the recommended emission limit results in a reduction of NO_X emissions by approximately 112,000 tons per year without significant increases in CO, CO_2, SO_2, or solid waste disposal. As discussed in section II.D, there are substantial human health and environmental benefits associated with the additional NO_X reductions and meeting the proposed emission limitation is a cost-effective means of achieving such reductions.

We note that earlier in the preamble we requested comment on whether gas reburning as applied to wet bottom boilers is comparable in cost to low NO_X burner technology and meets the requirements of Section 407(b)(2). Commenters believing that gas reburning meets the necessary requirements should also comment on what percent reduction is achievable and what effect, if any, there would be on the emission limit set for wet bottom boilers.

4. Vertically Fired Boilers

Performance. Because the combustion controls applied to vertically fired boilers meet the cost comparability requirements, the performance of these controls is assessed to determine what performance standards are achievable. Table 22 shows various measurements of the percent reduction and controlled emission rates for combustion controls on vertically fired boilers (see docket items II–A–2 at p. 3–18 & 3–19, II–B–4, and II–B–5).

TABLE 22.—NO_X REDUCTION PERFORMANCE FOR AVAILABLE NO_X CONTROLS

Source	NO_X control for vertically fired boilers	
	Combustion controls	
	Percent reduction	Controlled emission rate
AEP Tanner's Creek 1 (152 MWe).	40 (estimated)	0.57 (estimated)
Duquesne Light Elrama Unit 1 (100 MWe).	42	0.45
Duquesne Light Elrama Unit 2 (100 MWe).	≥40	~0.45
Duquesne Light Elrama Unit 3 (125 MWe).	≥40	~0.45

Based on the above NO_X reduction performance, EPA is projecting a 40% percentage reduction in NO_X emissions using combustion controls on vertically fired boilers. Every project in Table 22 achieved or is expected to achieve 40% or higher NO_X reductions. These projects achieve NO_X reductions by using two different combustion air staging systems: one that redistributes the combustion air within the burners and the second that accomplishes redistribution through OFA ports. EPA notes that this approach to controlling NO_X has been used by many vendors of technology and utilities for many years to control NO_X emissions from other types of boilers, e.g., dry bottom wall-fired and tangentially fired boilers (57 FR 55640).

Achievable Emission Limit. Applying the projected 40% emission reduction to the uncontrolled emissions of each boiler in the vertically fired population for which NO_X limits are to be set under section 407(b)(2), EPA determined how many of the boilers could achieve various NO_X performance standards. The following table shows the NO_X performance standards achievable by between 84.8% and 100% of the vertically fired boiler population.

TABLE 23

NO_X level (lb/mmBtu)	Number of boilers meeting NO_X level	Percent of boilers meeting NO_X level
0.85	29	100
0.80	28	96.6
0.74	26	89.7
0.72	24	82.8

Table 23 indicates that 97% of the 33 vertically fired boilers can achieve a NO_X controlled emissions rate of 0.80 lb/mmBtu

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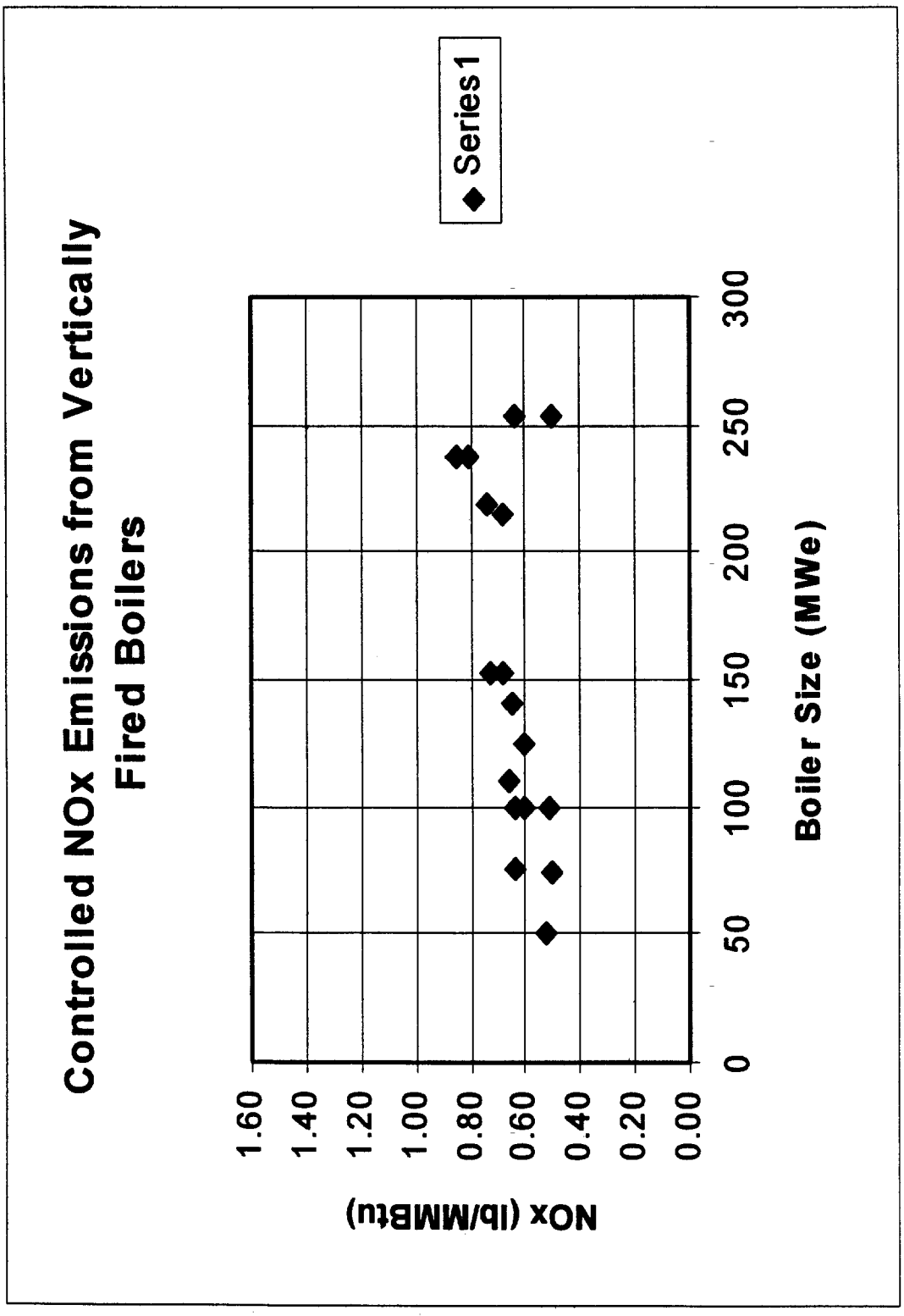
Figure 8



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Note that the proposed emission limit is greater than the controlled emission rates shown in Table 22. EPA has calculated the uncontrolled emission rates of vertically fired boilers to be as high as 1.42 lb/mmBtu and on average 1.06 lb/mmBtu. The boilers shown in Table 22 have uncontrolled emissions below the mean emission rate of the vertically fired population and, thus, are significantly lower than the uncontrolled emission rates of more than half of the boilers. Since as illustrated in Figure 8, the emission limit is based on approximately 95% of the population meeting it, the effect of the higher emitting boilers drives the emission limit toward the high end of the controlled emissions distribution.

Environmental Impacts. According to the EPA's Regulatory Impact Analysis, the establishment of 0.80 lb/mmBtu as the emission limit for vertically fired boilers will result in a total NO_X emissions reduction of approximately 57,000 tons per year. These reductions will be achieved through the use of combustion NO_X control technology. Since LNBs are also a form of combustion control technology, EPA estimates that the environmental and solid waste impacts of combustion controls on vertically fired boilers will be similar to the impacts of LNBs or OFA on Group 1 boilers. The application of LNBs or OFA on Group 1 boilers does not increase levels of CO, SO_2, or CO_2 but may increase the unburned carbon (UBC) level in the flyash. For boilers that do experience increases in UBC from uncontrolled levels, technologies that lower UBC to below uncontrolled levels at very little or no cost are available.

Conclusions. For the following reasons, EPA concludes that 0.80 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). First, combustion controls applied to vertically fired boilers are an available technology that meets the cost-comparability requirement. Second, an emission limit of 0.80 lb/mmBtu is a level that 97.0% of vertically fired boiler population should be able to meet with the application of combustion controls at 40% NO_X removal efficiency. Third, the cost impact on electricity consumers of using this control technology to meet the recommended emission limit is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. Finally, the recommended emission limit results in a reduction of NO_X emissions by approximately 57,000 tons per year without increases in CO, CO_2, SO_2, or solid waste disposal. As discussed in section II.D, there are substantial human health and environmental benefits associated with the additional NO_X reductions and meeting the proposed emission limitation is a cost-effective means of achieving such reductions.

5. FBC Boilers

The FBC boilers affected by the Title IV are inherently low NO_X emitters. Table 24 shows the CEM-measured emission rates of all Title IV-affected FBC boilers.

TABLE 24.—NO_X EMISSION RATES FOR TITLE IV-AFFECTED FBC BOILERS

Plant name	Boiler I.D.	NO_X emission rate (lb/mmBtu)
Nucla	1	0.170
Shawnee	10	0.230
Black Dog	2	0.258
R M Heskett	B2	0.286
TNP One	U1	0.169
TNP One	U2	0.153

Combustion controls are inherently included in the design of FBCs. Therefore, there is no additional cost involved with controlling NO_X from these boilers. EPA determined that applying a NO_X emission limitation to FBC boilers would result in no additional NO_X reductions since all these boilers are currently controlled. Observing the uncontrolled emissions of each boiler in the FBC boiler population for which NO_X limits are to be set under section 407(b)(2), EPA determined how many of the boilers could achieve various NO_X emission levels. The following table shows the NO_X emission levels achievable by between 50% and 100% of the FBC boiler population.

TABLE 25

NO_X level (lb/mmBtu)	Number of boilers meeting NO_X level	Percent of boilers meeting NO_X level
0.29	6	100
0.26	5	83.3
0.23	4	66.7
0.17	3	50.0

Table 25 indicates that 100% of the 6 FBC boilers can achieve a NO_X controlled emissions rate of 0.29 lb/mmBtu.

Conclusions. For the following reasons, EPA concludes that 0.29 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). First, combustion controls applied to FBC boilers are an available technology that meets the cost-comparability requirement. Second, an emission limit of 0.29 lb/mmBtu is a level that 100% of FBC boiler population should be able to meet with the application of combustion controls. Third, while the recommended limit will not result in any additional NO_X emission reductions (or in any increases in other pollutants or solid waste), the use of this control technology to meet the recommended emission limit imposes no additional cost on electricity consumers.

G. General Issues Raised

The Agency has received some public comment that, for some boiler types, some additional time should be provided for further demonstration of NO_X control technologies. Some commenters have suggested that EPA extend the Phase II NO_X compliance date for certain boiler types beyond January 1, 2000 and encourage, in the meantime, demonstration projects for such boiler types utilizing various control technologies. While EPA believes that the record supports establishment of the NO_X emission limitations, discussed above, for Group II boiler types in accordance with section 407(b)(2) of the Act, the Agency wants to ensure that the broadest range of constructive comment is elicited during the public comment period. For this reason, the Agency requests comment on, but does not propose, an alternative regulatory approach for specified boiler types that would incorporate the elements of postponement of compliance and encouragement of demonstration projects. Commenters should address the merits of the alternative approach with regard to specific Group II boiler types and whether such an approach would be consistent with the legal requirements of section 407(b)(2) and environmental goals of title IV.

Under this alternative regulatory approach, the compliance deadline for the specified boiler types for meeting Phase II NO_X emission limitations would be postponed for a short period (perhaps 2 years). Starting on the new compliance date, the applicable NO_X emission limitation for affected units of such boiler types would be the limitation set forth in today's proposed rule. However, a limited number of such units (perhaps 10 units), encompassing a range of annual operating capabilities, would be allowed to elect to comply early (i.e., on January 1, 2000) with a slightly higher NO_X emission limitation, which would become their applicable emission limitation for Phase II.

Each early-election unit would have to implement either: combustion controls designed to achieve a specified minimum percent reduction (perhaps 20 to 30 percent) in the uncontrolled NO_X emission rate; or an alternative NO_X control technology designed to achieve a specified minimum percent reduction (perhaps 40–50 percent). The unit could be incorporated in a NO_X averaging plan in accordance with § 76.11 during Phase II, using its applicable emission limitation. If the unit was unable to meet its applicable emission limitation, it could apply for an AEL in accordance with § 76.10.

EPA has also received comment concerning the desirability of allowing trading of NO_X emission reductions. EPA notes that it has previously considered and rejected, as outside the statutory scheme of section 407, the suggestion that banking of NO_X reductions be allowed as part of NO_X averaging plans 59 FR 13538, 13562 (March 22, 1994). The Agency seeks further comment on the legal basis and workability of a NO_X trading system. EPA has supported NO_X emissions trading for several years through a variety of programs developed by States under EPA's Economic Incentive Program. Examples include Massachusetts' Innovative Market Program for Air Credit Trading (IMPACT) for NO_X, VOC and CO, and Texas' Emissions Credit Banking and Trading Program for NO_X and VOC. In Los Angeles, NO_X emissions trading has been underway for more than a year through the South Coast Air Quality Management District's Regional Clean Air Incentive Market (RECLAIM).

Regional emissions trading is currently being considered for the eastern region of the US to address the persistent ozone non-attainment problems of many eastern States, due in part to the interstate transport of NO_X emissions. The Ozone Transport Commission (OTC), with support from EPA, is developing a model NO_X trading rule to be adopted by each of its twelve member States and the District of Columbia. Under a program similar to the Acid Rain Program for SO_2 emissions, NO_X emissions from utility boilers and large industrial boilers would be reduced significantly during the five-month ozone season under an emissions cap, but would allow for trades of NO_X emission allowances across State lines. The Ozone Transport Assessment Group (OTAG), with support from EPA, is considering a corresponding program for NO_X emissions from utilities and large industrial boilers for the 37 States in its region, including the States of the Ozone Transport Region. The possibility of including other sources of NO_X emissions, such as heavy-duty diesel engines and car fleets, through other types of emissions credit trading programs, is currently being examined.

The promulgation of EPA's Open Market Trading Rule will offer another option for States to consider in developing market incentive programs to reduce NO_X emissions. States will receive automatic EPA approval provided they adopt an identical version of EPA's model rule; variations on the model rule will also be readily approved as long as its implementation would not interfere with the State's attainment or maintenance strategies. Under EPA's Open Market Trading Rule, sources will be able to generate tradeable Discrete Emission Reduction (DER) credits for voluntarily reducing their NO_X or other emissions, provided the reduction is real and verifiable, and which, in turn, may be used by a purchaser to obtain flexibility in complying with an emissions limitation requirement. The open market trading program will enable States to offer both stationary and mobile sources the opportunity to achieve cost savings and emissions reduction flexibility, while providing an incentive for the development of new emissions reduction technologies.

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V. Regulatory Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Executive Order 12866

Under Executive Order 12866 (58 Fed. Reg. 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of

Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have an annual effect on the economy of approximately $143 million. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

The EPA does not anticipate major increases in prices, costs, or other significant adverse effects on competition, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets due to the final regulations.

In assessing the impacts of a regulation, it is important to examine (1) the costs to the regulated community, (2) the costs that are passed on to customers of the regulated community, and (3) the impact of these cost increases on the financial health and competitiveness of both the regulated community and their customers. The costs of this regulation to electric utilities are generally very small relative to their annual revenues. (However, the relative amount of the costs will definitely vary in individual cases.) Moreover, EPA expects that most or all utility expenses from meeting NO_X requirements will be passed along to ratepayers. When fully implemented in the year 2000, consumer electric utility rates are expected to rise by 0.07 percent on average due to this rulemaking. Consequently, the regulations are not likely to have an impact on utility profits or competitiveness.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency must prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely impacted by the rule.

In examining the impacts of this proposed regulation, EPA analyzed the following three regulatory scenarios:

1. Revising the existing Group 1 boiler emission limits for application to Phase II, Group 1 boilers and not establishing any emission limits for Group 2 boilers (resulting in the control of approximately 212,000 tons of NO_X per year at an annual total cost of approximately $56 million).

2. Revising the existing Group 1 boiler emission limits for application to Phase II, Group 1 boilers and establishing emission limits for Group 2 boilers (resulting in the control of approximately 831,000 tons of NO_X per year at an annual total cost of approximately $143 million).

3. Revising the existing Group 1 boiler emission limits for application to Phase II, Group 1 boilers and not establishing any emission limits for Group 2 boilers, however exempting cyclones less than 80 MWe (resulting in the control of approximately 830,000 tons of NO_X per year at an annual total cost of approximately $143 million).

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law. In this proposal, the Agency discusses several regulatory options and their associated costs. In addition, the Agency has initiated but not completed consideration of other regulatory options beyond the options discussed in the proposal. The Agency believes that, among the options considered thus far and based on the current record, the proposal is the least costly, most effective, and least burdensome alternative that achieves the objectives of title IV and section 407 in particular. As discussed above, the Agency is soliciting comment on, not only the regulatory options discussed in the proposal, but also on any additional regulatory options. Commenters should also address what options are the least costly and least burdensome. After completion of the comment period, during which the Agency anticipates receiving comments on the full range of potential regulatory options and their related costs, EPA will make a final determination of what option is the least costly, most effective, and least burdensome, consistent with title IV.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments and the private sector, in aggregate, of over $100 million per year starting in 2000, EPA has addressed budgetary impacts in the Regulatory Impact Analysis, as summarized below.

The proposed rule is promulgated under section 407(b)(2) of the Clean Air Act. Total expenditures resulting from the rule are estimated at: $143 million per year starting in 2000. There are no federal funds available to assist State, local, and tribal governments in meeting these costs. There are important benefits from NO_X emission reductions because atmospheric emissions of NO_X have adverse impacts on human health and welfare and on the environment.

The proposed rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community.[22] On the contrary, the rule

[22] As shown in EPA's Unfunded Mandates Act Analysis, as a result of this proposal, State and municipality owned boilers experience average

will result in only a minimal increase in average electricity rates. Moreover, the rule will not have a material effect on the national economy.

In developing the proposed rule, EPA provided numerous opportunities for consultation with interested parties, including State, local, and tribal governments, at public conferences and meetings. EPA evaluated the comments and concerns expressed, and the proposed rule reflects, to the extent consistent with section 407 of the Clean Air Act, those comments and concerns. These procedures will ensure State and local governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance. Additionally, the EPA will initiate consultations with the affected State and local governments. The 25 State and municipality owned utilities will be provided by EPA with a brief summary of the proposal and the estimated impacts.

As described in EPA's analysis (see docket item II–F–4, Unfunded Mandates Reform Act Analysis for the Nitrogen Oxides Emission Reduction Program Under the Clean Air Act Amendments Title IV), the costs to some small municipality or State owned utilities, are higher than for large utilities, which tend to be privately held. However, the analysis indicates that the cost increase is relatively small even for utilities owned by municipalities and States.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St. SW., Washington, DC 20460, or by calling (202) 260–2740.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*) requires EPA to consider potential impacts of proposed regulations on small business ''entities.'' If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Current Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a ''significant'' portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

Under the Regulatory Flexibility Act, a small business is any ''small business concern'' as identified by the Small Business Administration under section 3 of the Small Business Act. As of January 1, 1991, the Small Business Administration had established the size threshold for small electric services companies at 4 million megawatt hours per year. EPA's initial estimates are that the burden on small utilities under Phase II is minimal.

Pursuant to the provisions of 5 U.S.C. § 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse impact on a substantial number of small entities.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen oxide, Reporting and recordkeeping requirements.

Dated: December 18, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 76 is amended as follows:

PART 76—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

2. Section 76.2 is amended by revising the definition of ''coal-fired utility unit'' and ''wet bottom'' and adding definitions for ''combustion controls'', ''fluidized bed combustor boiler'', ''non-plug-in combustion controls'', ''plug-in combustion controls'', and ''vertically fired boiler'', to read as follows:

§ 76.2 Definitions.

* * * * *

Coal-fired utility unit means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0 percent of its annual heat input during the following calendar year: for Phase I units, in calendar year 1990; and, for Phase II units, in calendar year 1995 or, for a Phase II unit that did not combust any fuel that resulted in the generation of electricity in calendar year 1995, in any calendar year during the period 1990–1995. For the purposes of this part, this definition shall apply notwithstanding the definition in § 72.2 of this chapter.

* * * * *

Combustion controls means technology that minimizes NO_X formation by staging fuel and combustion air flows in a boiler. This definition shall include low NO_X burners, overfire air, or low NO_X burners with overfire air.

* * * * *

control costs of 0.110 mills/kWh while the national average control costs are 0.109 mills/kWh.

Fluidized bed combustor boiler means a boiler in which crushed coal, in combination with inert material (e.g., silica, alumina, or ash) and air, is maintained in a turbulent, suspended state and is combusted at relatively low temperatures.

* * * * *

Non-plug-in combustion controls means the replacement, in a cell burner boiler, of the portions of the waterwalls containing the cell burners by new portions of the waterwalls containing low NO_X burners or low NO_X burners with overfire air.

* * * * *

Plug-in combustion controls means the replacement, in a cell burner boiler, of existing cell burners by low NO_X burners or low NO_X burners with overfire air.

* * * * *

Vertically fired boiler means a dry bottom boiler with circular burners, or coal and air pipes, oriented downward and mounted on waterwalls that are horizontal or at an angle. This definition shall include dry bottom arch-fired boilers, dry bottom roof-fired boilers, and dry bottom top-fired boilers and shall exclude dry bottom turbo-fired boilers.

* * * * *

Wet bottom means that the ash is removed from the furnace in a molten state. The term ''wet bottom boiler'' shall include: wet bottom wall-fired boilers, including wet bottom turbo-fired boilers; and wet bottom boilers otherwise meeting the definition of vertically fired boilers, including wet bottom arch-fired boilers, wet bottom roof-fired boilers, and wet bottom top fired boilers. The term ''wet bottom boiler'' shall exclude cyclone boilers and tangentially fired boilers.

§ 76.5 [Amended]

3. Section 76.5 is amended by removing paragraph (g).

4. Section 76.6 is added to read as follows:

§ 76.6 NO_X emission limitations for Group 2 boilers.

(a) Beginning January 1, 2000 or, for a unit subject to section 409(b) of the Act, the date on which the unit is required to meet Acid Rain emission reduction requirements for SO_2 , the owner or operator of a Group 2, Phase II coal-fired boiler with a cell burner boiler, cyclone boiler, a wet bottom boiler, a vertically fired boiler, or a fluidized bed combustor boiler shall not discharge, or allow to be discharged, emissions of NO_X to the atmosphere in excess of the following limits, except as provided in §§ 76.11 or 76.12:

(1) 0.68 lb/mmBtu of heat input on an annual average basis for cell burner boilers. The NO_X emission control technology on which the emission limitation is based is plug-in combustion controls or non-plug-in combustion controls. Except as provided in § 76.5(d), the owner or operator of a unit with a cell burner boiler that installs non-plug-in combustion controls prior to January 1, 2000 shall comply with the emission limitation applicable to cell burner boilers.

(2) 0.94 lb/mmBtu of heat input on an annual average basis for cyclone boilers. The NO_X emission control technology on which the emission limitation is based is coal reburning, natural gas reburning, or selective catalytic reduction.

(3) 0.86 lb/mmBtu of heat input on an annual average basis for wet bottom boilers. The NO_X emission control technology on which the emission limitation is based is combustion controls.

(4) 0.80 lb/mmBtu of heat input on an annual average basis for vertically fired boilers. The NO_X emission control technology on which the emission limitation is based is combustion controls.

(5) 0.29 lb/mmBtu of heat input on an annual average basis for fluidized bed combustor boilers. The NO_X emission control technology on which the emission limitation is based is fluid bed combustion controls.

(b) The owner or operator shall determine the annual average NO_X emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter.

5. Section 76.7 is added to read as follows:

§ 76.7 Revised NO_X emission limitations for Group 1, Phase II boilers.

(a) Beginning January 1, 2000, the owner or operator of a Group 1, Phase II coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler shall not discharge, or allow to be discharged, emissions of NO_X to the atmosphere in excess of the following limits, except as provided in §§ 76.8, 76.11, or 76.12:

(1) 0.38 lb/mmBtu of heat input on an annual average basis for tangentially fired boilers.

(2) 0.45 lb/ mmBtu of heat input on an annual average basis for dry bottom wall-fired boilers (other than units applying cell burner technology).

(b) The owner or operator shall determine the annual average NO_X emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter.

§ 76.8 [Amended]

6. Section 76.8 is amended by: removing from paragraph (a)(2) the words ''any revised NO_X emission limitation for Group 1 boilers that the Administrator may issue pursuant to section 407(b)(2) of the Act'' and adding, in their place, the words ''§ 76.7''; removing from paragraph (a)(5) the words ''§§ 76.5(g) and if revised emission limitations are issued for group 1 boilers pursuant to section 407(b)(2) of the Act,''; and removing from paragraphs (e)(3)(iii) (A) and (B) the words ''§ 76.5(g) and, if revised emission limitations are issued pursuant to section 407(b)(2) of the Act,''.

§ 76.10 [Amended]

7. Section 76.10 is amended by removing from paragraph (f)(1)(iii) the words ''§ 76.5(g) or 76.6'' and adding, in their place, the words ''§§ 76.6 or 76.7''.

Appendix B [Amended]

8. Appendix B is amended by: removing from the heading of Appendix B the words ''Group 1, Phase I'' and adding, in their place, the words ''Group 1''; removing from section 1 the words ''average cost'' and adding, in their place, the words ''distribution of costs''; removing from section 1 the words ''average capital costs and cost-effectiveness'' and adding, in their place, the words ''average capital costs and distribution of cost effectiveness''; removing from section 1, the introductory text of section 2, and section 2.4 the words ''Group 1, Phase I'' in each place that the words appear and adding, in their place, the words ''Group 1''; and removing and reserving section 3.

[FR Doc. 96–494 Filed 1–18–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
January 19, 1996

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, 59 FR 40170, 60 FR 20726).

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Suite 302, 6000 Executive Boulevard, MSC 7010, Bethesda, Maryland 20892–7010, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today's action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the Federal Register of August 18, 1994 (58 FR 44098), November 8, 1994 (59 FR 55796), February 8, 1995 (60 FR 7630), and May 22, 1995 (60 FR 27207), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 8–9, 1995.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Amendments to Sections II, III, IV, V, Appendices B, C, H, and Q of the NIH Guidelines Regarding Updating the Classification of Microorganisms

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested the revision and updating of Appendix B, Classification of Microorganisms on the Basis of Hazard. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Recombinant DNA Advisory Committee to review which included the latest taxonomy and agent risk group classifications as defined by the Centers for Disease Control and Prevention.

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retained the option to adopt any modifications to the Centers for Disease Control and Prevention listing. The Committee recommended that the revised Appendix B, Classification of Microorganisms on the Basis of Hazard, submitted by Dr. Fleming should not be adopted until the Committee received letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, Classification of Microorganisms on the Basis of Hazard, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B was submitted to the Recombinant DNA Advisory Committee December 1–2, 1994, meeting for review and discussion. During the December 1994 meeting, the Committee recommended publishing the revised Appendix B in the Federal Register for public comment, with further review of this proposal and possible approval during the March 6–7, 1995, meeting.

During the March 6–7, 1995 meeting, the Recombinant DNA Advisory Committee deferred approval of the proposed amendments to Appendix B pending additional revisions to the remaining sections and appendices of the NIH Guidelines that are required to adequately accommodate the revised Appendix B (Sections II, III, IV, V, Appendices C, H, and Q). The motion for deferral included a recommendation that a subcommittee consisting of Dr. Stephen Straus (Chair of the Subcommittee), ad hoc experts, and Office of Recombinant DNA Activities staff would meet to develop the required modifications. The motion passed by a vote of 17 in favor, 0 opposed, and no abstentions.

On May 5, 1995, the Appendix B Subcommittee met to finalize the document in terms of its listing of pathogens and the text of the NIH Guidelines related to Appendix B in other sections and appendices (Sections II, III, IV, V, Appendices C, H, and Q). During the June 8–9, 1995 meeting, the Recombinant DNA Advisory Committee reviewed the document. There was a concurrence that the Risk Group classification serves as an initial guidance to assign an appropriate containment level for a particular experiment by the Institutional Biosafety Committees and the investigators. Since the new Appendix B is primarily concerned with human pathogenicity, it addresses only the human etiologic agents and omits all animal agents. The Committee observed that this omission created a problem because some of the animal agents, particularly the group of viruses known as oncogenic viruses are frequently used as vectors for gene transfer in the laboratories or in human studies. The Recombinant DNA Advisory Committee approved a motion to: (1) establish a working group to recommend exemption of additional vector systems in Appendix C (exempt host-vector systems), and (2) accept the proposed amendments to Appendix B with the provision to develop a new Appendix B–V relating to animal viruses relevant to human studies, and to list specific examples of agents under Appendix B–I, Risk Group 1 (RG1) Agents. The motion was approved by a vote of 17 in favor, 0 opposed, and no abstentions.

On June 13, 1995, the Office of Recombinant DNA Activities forwarded two versions of the Appendix B–V, Animal Viral Etiologic Agents in Common Use to the Appendix B Subcommittee. Most of these agents were previously listed as Class 2 oncogenic viruses in two separate categories of low and moderate risk agents in the original Appendix B. Since none of these animal etiologic agents are associated with disease in healthy human adults, one version of Appendix B–V listed these agents as a single group recommended for Biosafety Level 1 containment and another version listed them in a two-tier system for either Biosafety Level 1 or Biosafety Level 2 containment. Subsequent discussion with the members of the Appendix B Subcommittee concluded that while there was no reason to have a separate group of ''moderate'' risk agents in this list, it was prudent to recommend conducting experiments under a Biosafety Level 2 containment with several agents that are capable of infecting human cells, e.g., amphotropic and xenotropic murine leukemia virus.

During the September 11–12, 1995, meeting, the Recombinant DNA Advisory Committee reviewed the updated Appendix B along with other sections and appendices of the NIH Guidelines (Sections II, III, IV, V, Appendices C, H, and Q) relating to classification of microorganisms. It was observed that some viruses in the moderate risk group could infect human cells but their replication was largely restricted to their animal hosts. Some Committee members pointed out that

some viruses with oncogenes such as SV40 have been treated more cautiously than viruses without oncogenes; therefore, a two-tier list should be used. Dr. Wivel explained that listing a group of animal viruses as ''moderate risk'' agents introduces an inconsistency into Appendix B. Some strains of these viruses, although capable of infecting human cells, have not been shown to be associated with any disease in healthy human adults. They fall within the definition of Risk Group 1 agents, i.e., agents that are not associated with disease in healthy adult humans. Two committee members inquired why several viruses in the original Appendix B are not listed in the new version. Dr. Thomas Shih (Executive Secretary, Appendix B Subcommittee) explained that several rarely used viruses such as chick embryo lethal orphan virus are deleted from the new list. The list includes commonly used organisms, and it is not intended to be inclusive since many other animal agents are not listed. Dr. Walters (Chair, Recombinant DNA Advisory Committee) stated that the consensus of the committee is to accept the list of animal viruses in Appendix B–V as a reasonable modification of Appendix B.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Amendments to Section II, Safety Considerations (Previously the Entire Section II was Entitled Containment)

Section II is amended to read:

Section II. Safety Considerations

Section II–A. Risk Assessment

Section II–A–1. Risk Groups

Risk assessment requires the exercise of sound judgment by the investigator. The investigator must make an initial risk assessment based on the Risk Group (RG) of an agent (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard). Agents are classified into four Risk Groups (RGs) according to their relative pathogenicity for healthy adult humans by the following criteria: (1) Risk Group 1 (RG1) agents are not associated with disease in healthy adult humans. (2) Risk Group 2 (RG2) agents are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available. (3) Risk Group 3 (RG3) agents are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available. (4) Risk Group 4 (RG4) agents are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available.

Section II–A–2. Criteria for Risk Groups

Classification of agents is based on the potential effect of a biological agent on a healthy human adult and does not account for instances in which an individual may have increased susceptibility to such agents, e.g., preexisting diseases, medications, compromised immunity, pregnancy or breast feeding (which may increase exposure of infants to some agents) (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard).

Personnel may need periodic medical surveillance to ascertain fitness to perform certain activities; they may also need to be offered prophylactic vaccines and boosters (see Section IV–B–1–f, Responsibilities of the Institution, General Information).

Section II–A–3. Comprehensive Risk Assessment

In deciding on the appropriate containment for an experiment, the initial risk assessment from Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, should be followed by a thorough consideration of the agent itself and how it is to be manipulated. Factors to be considered in determining the level of containment include agent factors such as: virulence, pathogenicity, infectious dose, environmental stability, route of spread, communicability, operations, quantity, availability of vaccine or treatment, and gene product effects such as toxicity, physiological activity, and allergenicity. Any strain that is known to be more hazardous than the parent (wild-type) strain should be considered for handling at a higher containment level. Certain attenuated strains or strains that have been demonstrated to have irreversibly lost known virulence factors may qualify for a reduction of the containment level compared to the Risk Group assigned to the parent strain (see Section V–B, Footnotes and References of Sections I through IV).

A final assessment of risk based on these considerations is then used to set the appropriate containment conditions for the experiment (see Section II–B, Containment). The containment level required may be equivalent to the Risk Group classification of the agent or it may be raised or lowered as a result of the above considerations. The Institutional Biosafety Committee must approve the risk assessment and the biosafety containment level for recombinant DNA experiments described in Sections III–A, Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation, III–B, Experiments that Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation, and III–C, Experiments that Require Institutional Biosafety Committee Approval Before Initiation.

Careful consideration should be given to the types of manipulation planned for some higher Risk Group agents. For example, the RG2 dengue viruses may be cultured under the Biosafety Level (BL) 2 containment (see Section II–B); however, when such agents are used for animal inoculation or transmission studies, a higher containment level is recommended. Similarly, RG3 agents such as Venezuelan equine encephalomyelitis and yellow fever viruses should be handled at a higher containment level for animal inoculation and transmission experiments.

Individuals working with human immunodeficiency virus (HIV), hepatitis B virus (HBV) or other bloodborne pathogens should consult Occupational Exposure to Bloodborne Pathogens; Final Rule (56 FR 64175–64182). BL2 containment is recommended for activities involving all blood-contaminated clinical specimens, body fluids, and tissues from all humans, or from HIV- or HBV-infected or inoculated laboratory animals. Activities such as the production of research-laboratory scale quantities of HIV or other bloodborne pathogens, manipulating concentrated virus preparations, or conducting procedures that may produce droplets or aerosols, are performed in a BL2 facility using the additional practices and containment equipment recommended for BL3. Activities involving industrial scale volumes or preparations of concentrated HIV are conducted in a BL3 facility, or BL3 Large Scale if appropriate, using BL3 practices and containment equipment.

Exotic plant pathogens and animal pathogens of domestic livestock and poultry are restricted and may require special laboratory design, operation and containment features not addressed in Biosafety in Microbiological and Biomedical Laboratories (see Section V–C, Footnotes and References of Sections I through IV). For information regarding the importation, possession, or use of these agents see Sections V–G and V–H, Footnotes and References of Sections I through IV.

Section II–B. Containment

Effective biological safety programs * * *

[Rest of Section II remains unchanged.]

B. Amendments to Section III, Experiments Covered by the NIH Guidelines

Section III–C is amended to read:

Section III–C. Experiments That Require Institutional Biosafety Committee Approval Before Initiation

Prior to the initiation of an experiment that falls into this category, the Principal Investigator must submit a registration document to the Institutional Biosafety Committee which contains the following information: (i) the source(s) of DNA; (ii) the nature of the inserted DNA sequences; (iii) the host(s) and vector(s) to be used; (iv) an indication of what protein will be produced if an attempt is to be made to obtain expression of a foreign gene; and (v) the containment conditions that will be implemented as specified in the NIH Guidelines. For experiments in this category, the registration document shall be dated, signed by the Principal Investigator, and filed with the Institutional Biosafety Committee. The Institutional Biosafety Committee shall review and approve all experiments in this category prior to their initiation. Requests to decrease the level of containment specified for experiments in this category will be considered by NIH (see Section IV–C–1–b–(2)–(c), Minor Actions).

Section III–C–1. Experiments Using Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents as Host-Vector Systems (see Section II–A, Risk Assessment).

Section III–C–1–a. Experiments involving the introduction of recombinant DNA into Risk Group 2 agents will usually be conducted at Biosafety Level (BL) 2 containment. Experiments with such agents will usually be conducted with whole animals at BL2 or BL2–N (Animals) containment.

Section III–C–1–b. Experiments involving the introduction of recombinant DNA into Risk Group 3 agents will usually be conducted at BL3 containment. Experiments with such agents will usually be conducted with whole animals at BL3 or BL3–N containment.

Section III–C–1–c. Experiments involving the introduction of recombinant DNA into Risk Group 4 agents shall be conducted at BL4 containment. Experiments with such agents will usually be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into restricted agents shall be set on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with plant or animal pathogens (see Section V–G and V–L, Footnotes and References of Sections I through IV). Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–2. Experiments in which DNA From Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents (see Section V–A, Footnotes and References of Sections I through IV) is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.

Section III–C–2–a. Experiments in which DNA from Risk Group 2 or Risk Group 3 agents (see Section II–A, Risk Assessment) is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment. Experiments in which DNA from Risk Group 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, BL4 containment shall be used. The Institutional Biosafety Committee may approve the specific lowering of containment for particular experiments to BL1. Many experiments in this category are exempt from the NIH Guidelines (see Section III–E, Exempt Experiments). Experiments involving the formation of recombinant DNA for certain genes coding for molecules toxic for vertebrates require NIH/ORDA approval (see Section III–B–1, Experiments Involving the Cloning of Toxin Molecules With LD_{50} of Less than 100 Nanograms Per Kilogram Body Weight) or shall be conducted under NIH specified conditions as described in Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates.

Section III–C–2–b. Containment conditions for experiments in which DNA from restricted agents is transferred into nonpathogenic prokaryotes or lower eukaryotes shall be determined by NIH/ORDA following a case-by-case review (see Section V–L, Footnotes and References of Sections I through IV). A U.S. Department of Agriculture permit is required for work with plant or animal pathogens (see Section V–G, Footnotes and References of Sections I through IV).

Section III–C–3. Experiments Involving the Use of Infectious DNA or RNA Viruses or Defective DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems.

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions that permit a productive infection. In such cases, serious consideration should be given to increasing physical containment by at least one level.

Note: Recombinant DNA or RNA molecules derived therefrom, which contain less than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family) (See Section V–J, Footnotes and References of Sections I through IV) being considered identical (see Section V–K, Footnotes and References of Sections I through IV), are considered defective and may be used in the absence of helper virus under the conditions specified in Section III–D–1, Experiments Involving the Formation of Recombinant DNA Molecules Containing No More than Two-Thirds of the Genome of any Eukaryotic Virus.

Section III–C–3–a. Experiments involving the use of infectious or defective Risk Group 2 viruses (see Section V–A, Footnotes and References of Sections I through IV, and Appendix B–II, Risk Group 2 Agents) in the presence of helper virus may be conducted at BL2.

Section III–C–3–b. Experiments involving the use of infectious or defective Risk Group 3 viruses (see Section V–A, Footnotes and References of Sections I through IV, and Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions) in the presence of helper virus may be conducted at BL3.

Section III–C–3–c. Experiments involving the use of infectious or defective Risk Group 4 viruses (see Section V–A, Footnotes and References of Sections I through IV, and Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents) in the presence of helper virus may be conducted at BL4.

Section III–C–3–d. Experiments involving the use of infectious or defective restricted poxviruses (see Section V–A and V–L, Footnotes and References of Sections I through IV) in the presence of helper virus shall be determined on a case-by-case basis following NIH/ORDA review. A U.S.

Department of Agriculture permit is required for work with plant or animal pathogens (see Section V–G, Footnotes and References of Sections I through IV).

Section III–C–3–e. Experiments involving the use of infectious or defective viruses in the presence of helper virus which are not covered in Sections III–E–3–a through III–C–3–d may be conducted at BL1.

Section III–C–4. Experiments Involving Whole Animals.

This section covers experiments involving whole animals in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-like (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be conducted at BL1–N containment. A minimum containment of BL2 or BL2–N is required.

Caution—Special care should be used in the evaluation of containment conditions for some experiments with transgenic animals. For example, such experiments might lead to the creation of novel mechanisms or increased transmission of a recombinant pathogen or production of undesirable traits in the host animal. In such cases, serious consideration should be given to increasing the containment conditions.

Section III–C–4–a. Recombinant DNA, or DNA or RNA molecules derived therefrom, from any source except for greater than two-thirds of eukaryotic viral genome may be transferred to any nonhuman vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study (see Section V–B, Footnotes and References of Sections I through IV). Animals that contain sequences from viral vectors, which do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals, may be propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study. Experiments involving the introduction of other sequences from eukaryotic viral genomes into animals are covered under Section III–C–4–b, Experiments Involving Whole Animals. For experiments involving recombinant DNA-modified Risk Groups, 2, 3, 4, or restricted organisms, see Sections V–A, V–G, and V–L, Footnotes and References of Sections I through IV. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infections. A U.S. Department of Agriculture permit is required for work with plant or animal pathogens (see Section V–G, Footnotes and References of Sections I through IV).

Section III–C–4–b. For experiments involving recombinant DNA, or DNA or RNA derived therefrom, involving whole animals, including transgenic animals, and not covered by Sections III–C–1, Experiments Using Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents as Host-Vector Systems, or III–C–4–a, Experiments Involving Whole Animals, the appropriate containment shall be determined by the Institutional Biosafety Committee.

[The rest of the Section III–C remains unchanged.]

C. Amendments to Section IV, Roles and Responsibilities

Section IV–C–1–b–(2)–(e) is amended to read:

Section IV–C–1–b–(2)–(e). Setting containment under Sections III–C–1–d, Experiments Using Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents as Host-Vector Systems, and III–C–2–b, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems;

[The rest of the Section IV–C–1–b–(2) remains unchanged.]

D. Amendments to Section V, Footnotes and References of Sections I Through IV

Section V is amended to read:

Section V. Footnotes and References of Sections I through IV

Section V–A. The NIH Director, with advice of the RAC, may revise the classification for the purposes of the NIH Guidelines (see Section IV–C–1–b–(2)–(e), Minor Actions). The revised list of organisms in each risk group is reprinted in Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard.

Section V–B. Section III, Experiments Covered by the NIH Guidelines, describes a number of places where judgments are to be made. In all these cases, the Principal Investigator shall make the judgment on these matters as part of his/her responsibility to ''make the initial determination of the required levels of physical and biological containment in accordance with the NIH Guidelines'' (see Section IV–B–4–c–(1), Principal Investigator). For cases falling under Sections III–A through III–D, Experiments Covered by the NIH Guidelines, this judgment is to be reviewed and approved by the Institutional Biosafety Committee as part of its responsibility to make an ''independent assessment of the containment levels required by the NIH Guidelines for the proposed research'' (see Section IV–B–2–b–(1), Institutional Biosafety Committee). The Institutional Biosafety Committee may refer specific cases to NIH/ORDA as part of NIH/ORDA's functions to ''provide advice to all within and outside NIH'' (see Section IV–C–3, Office of Recombinant DNA Activities). NIH/ORDA may request advice from the RAC as part of the RAC's responsibility for ''interpreting the NIH Guidelines for experiments to which the NIH Guidelines do not specifically assign containment levels'' (see Section IV–C–1–b–(2)–(f), Minor Actions).

Section V–C. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention and the National Institutes of Health. Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, 1993. Copies are available from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (stock # 017–040–00523–7), Phone (202)–512–2356.

Section V–D. Classification of Etiologic Agents on the Basis of Hazard, 4th Edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

Section V–E. Benenson, Abram S. ed., Control of Communicable Diseases in Man, 15th edition. 1990. American Public Health Association, Washington, DC.

Section V–F. World Health Organization Laboratory Biosafety Manual, 2nd edition. 1993. WHO Albany, NY. Copies are available from: WHO Publication Centre, USA, (Q Corp) 49 Sheridan Avenue, Albany, New York 12210; Phone: (518)–436–9686 (Order # 1152213).

Section V–G. A U.S. Department of Agriculture permit, required for import and interstate transport of plant and animal pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service (APHIS), Veterinary Services, National Center for Import-Export, Products Program, 4700 River Road, Unit 40, Riverdale, MD 20737. Phone: (301)–734–8499; Fax: (301)–734–8226.

Section V–H. American Type Culture Collection Catalogues of plant viruses, animal viruses, cells, bacteria, fungi, etc. are available from American Type Culture Collection, 12301 Parklawn Drive, Rockville, Maryland 20852–1776. Phone: (800)–638–6597; Fax: (301)–231–5826.

Section V–I. U.S. Department of Labor, Occupational Safety and Health Administration. 1991. Occupational Exposure to Bloodborne Pathogens, Final Rule (56 FR 64175–64182).

Section V–J. As classified in the 6th Report on the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, F.A. Murphy et al., Archives of Virology/ Supplement 10, 1995, Springer-Verlag, New York, New York.

Section V–K. i.e., the total of all genomes within a family shall not exceed two-thirds of the genome.

Section V–L. Organisms including alastrim, smallpox (variola) and whitepox may not be studied in the United States except at specified facilities. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Section V–M. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–G, Footnotes and References of Sections I through IV). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

E. Amendments to Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard

Appendix B is amended to read:

Appendix B. Classification of Human Etiologic Agents on the Basis of Hazard

Appendix B includes those biological agents known to infect humans, as well as selected animal agents, that may pose theoretical risks if inoculated into humans. Included in the lists are species known to be pathogenic, mutated, or recombined; non-pathogenic species and strains are not considered. Non-infectious life cycle stages of parasites are excluded.

This appendix reflects the current state of knowledge and should be considered a resource document. The more commonly encountered agents are included; however, this appendix is not meant to be all inclusive. Information on agent risk assessment may be found in the Agent Summary Statements of the Centers for Disease Control and Prevention/National Institutes of Health publications, Biosafety in Microbiological and Biomedical Laboratories (see Sections V–C, V–D, V–E, and V–F, Footnotes and References of Sections I through IV). Further guidance on agents not listed in Appendix B may be obtained through: Centers for Disease Control and Prevention, Biosafety Branch, Atlanta, Georgia 30333, Phone: (404)–639–3883, Fax: (404)–639–2294; National Institutes of Health, Division of Safety, Bethesda, Maryland 20892, Phone: (301)–496–1357; National Animal Disease Center, U.S. Department of Agriculture, Ames, Iowa 50010, Phone: (515)–862–8258.

A special committee of the American Society for Microbiology will conduct an annual review of this appendix and its recommendation for changes will be presented to the Recombinant DNA Advisory Committee as proposed amendments to the NIH Guidelines.

Appendix B—Table 1.—Basis for the Classification of Biohazardous Agents by Risk Group (RG)

Risk Group 1 (RG1).	Agents that are not associated with disease in healthy adult humans.
Risk Group 2 (RG2).	Agents that are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available.
Risk Group 3 (RG3).	Agents that are associated with serious or lethal disease for which preventive or therapeutic interventions may be available (high individual risk but low community risk).
Risk Group 4 (RG4).	Agents that are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available (high individual risk and high community risk).

Appendix B–I. Risk Group 1 (RG1) Agents

RG1 agents are not associated with disease in healthy adult humans. Examples of RG1 agents include asporogenic *Bacillus subtilis* or *Bacillus licheniformis* (see Appendix C–IV–A, *Bacillus subtilis* or *Bacillus licheniformis Host-Vector Systems, Exceptions), Eschenrichia coli*-K12 (see Appendix C–II–A, *Escherichia coli K–12 Host-Vector Systems, Exceptions),* and adeno-associated virus types 1–4.

Those agents not listed in Risk Groups (RGs) 2, 3 and 4 are not automatically or implicitly classified in RG1; a risk assessment must be conducted based on the known and potential properties of the agents and their relationship to agents that are listed.

Appendix B–II. Risk Group 2 (RG2) Agents

RG2 agents are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available.

Appendix B–II–A. Risk Group 2 (RG2)—Bacterial Agents Including Chlamydia

—*Acinetobacter baumannii* (formerly *Acinetobacter calcoaceticus*)
—*Actinobacillus*
—*Actinomyces pyogenes* (formerly *Corynebacterium pyogenes*)
—*Aeromonas hydrophila*
—*Amycolata autotrophica*
—*Archanobacterium haemolyticum* (formerly *Corynebacterium haemolyticum*)
—*Arizona hinshawii*—all serotypes
—*Bacillus anthracis*
—*Bartonella henselae, B. quintana, B. vinsonii*
—*Bordetella including B. pertussis*
—*Borrelia recurrentis, B. burgdorferi*
—*Burkholderia* (formerly *Pseudomonas* species) except those listed in Appendix B–III–A (RG3))
—*Campylobacter coli, C. fetus, C. jejuni*
—*Chlamydia psittaci, C. trachomatis, C. pneumoniae*
—*Clostridium botulinum, Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani*
—*Corynebacterium diphtheriae, C. pseudotuberculosis, C. renale*
—*Dermatophilus congolensis*
—*Edwardsiella tarda*
—*Erysipelothrix rhusiopathiae*
—*Escherichia coli*—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen, including *E. coli* O157:H7
—*Haemophilus ducreyi, H. influenzae*
—*Helicobacter pylori*
—*Klebsiella*—all species except *K. oxytoca* (RG1)
—*Legionella* including *L. pneumophila*
—*Leptospira interrogans*—all serotypes
—*Listeria*
—*Moraxella*
—*Mycobacterium* (except those listed in Appendix B–III–A (RG3)) including *M. avium* complex, *M. asiaticum, M. bovis* BCG vaccine strain, *M. chelonei,*

M. fortuitum, M. kansasii, M. leprae, M. malmoense, M. marinum, M. paratuberculosis, M. scrofulaceum, M. simiae, M. szulgai, M. ulcerans, M. xenopi
—*Mycoplasma,* except *M. mycoides* and *M. agalactiae* which are restricted animal pathogens
—*Neisseria gonorrhoea, N. meningitidis*
—*Nocardia asteroides, N. brasiliensis, N. otitidiscaviarum, N. transvalensis*
—*Rhodococcus equi*
—*Salmonella* including *S. arizonae, S. cholerasuis, S. enteritidis, S. gallinarum-pullorum, S. meleagridis, S. paratyphi,* A, B, C, *S. typhi, S. typhimurium*
—*Shigella* including *S. boydii, S. dysenteriae,* type 1, *S. flexneri, S. sonnei*
—*Sphaerophorus necrophorus*
—*Staphylococcus aureus*
—*Streptobacillus moniliformis*
—*Streptococcus* including *S. pneumoniae, S. pyogenes*
—*Treponema pallidum, T. carateum*
—*Vibrio cholerae, V. parahemolyticus, V. vulnificus*
—*Yersinia enterocolitica*

Appendix B–II–B. Risk Group 2 (RG2)—Fungal Agents

—*Blastomyces dematitidis*
—*Cladosporium bantianum, C. (xylohypha) trichoides*
—*Cryptococcus neofomans*
—*Dactylaria galopava (Ochroconis gallopavum)*
—*Epidermophyton*
—*Exophiala (Wangiella) dermatitidis*
—*Fonsecaea pedrosoi*
—*Microsporum*
—*Paracoccidioides braziliensis*
—*Penicillium marneffei*
—*Sporothrix schenckii*
—*Trichophyton*

Appendix B–II–C. Risk Group 2 (RG2)—Parasitic Agents

—*Ancylostoma* human hookworms including *A. duodenale, A. ceylanicum*
—*Ascaris* including *Ascaris lumbricoides suum*
—*Babesia* including *B. divergens, B. microti*
—*Brugia* filaria worms including *B. malayi, B. timori*
—*Coccidia*
—*Cryptosporidium* including *C. parvum*
—*Cysticercus cellulosae* (hydatid cyst, larva of *T. solium*)
—*Echinococcus* including *E. granulosis, E. multilocularis, E. vogeli*
—*Entamoeba histolytica*
—*Enterobius*
—*Fasciola* including *F. gigantica, F. hepatica*
—*Giardia* including *G. lamblia*
—*Heterophyes*
—*Hymenolepis* including *H. diminuta, H. nana*
—*Isospora*
—*Leishmania* including *L. braziliensis, L. donovani, L. ethiopia, L. major, L. mexicana, L. peruvania, L. tropica*
—*Loa loa* filaria worms
—*Microsporidium*
—*Naegleria fowleri*
—*Necator* human hookworms including *N. americanus*
—*Onchoerca* filaria worms including, *O. volvulus*
—*Plasmodium* including simian species, *P. cynomologi, P. falciparum, P. malariae, P. ovale, P. vivax*
—*Sarcocystis* including *S. sui hominis*
—*Schistosoma* including *S. haematobium, S. intercalatum, S. japonicum, S. mansoni, S. mekongi*
—*Strongyloides* including *S. stercoralis*
—*Taenia solium*
—*Toxocara* including *T. canis*
—*Toxoplasma* including *T. gondii*
—*Trichinella spiralis*
—*Trypanosoma* including *T. brucei brucei, T. brucie gambiense, T. brucei rhodesiense, T. cruzi*
—*Wuchereria bancrofti* filaria worms

Appendix B–II–D. Risk Group 2 (RG2)—Viruses

Adenoviruses, Human—All Types

Alphaviruses (Togaviruses)—Group A Arboviruses

—Eastern equine encephalomyelitis virus
—Venezuelan equine encephalomyelitis vaccine strain TC–83
—Western equine encephalomyelitis virus

Arenaviruses

—Lymphocytic choriomeningitis virus (non-neurotropic strains)
—Tacaribe virus complex
—Other viruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Bunyaviruses

—Bunyamwera virus
—Rift Valley fever virus vaccine strain MP–12
—Other viruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Calciviruses

Coronaviruses

Flaviviruses (Togaviruses)—Group B Arboviruses

—Dengue virus serotypes 1, 2, 3, and 4
—Yellow fever virus vaccine strain 17D
—Other viruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Hepatitis A, B, C, D, and E Viruses

—Herpesviruses—except Herpesvirus simiae (Monkey B virus) (see Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents)
—Cytomegalovirus
—Epstein Barr virus
—*Herpes simplex* types 1 and 2
—*Herpes zoster*
—Human herpesvirus types 6 and 7

Orthomyxoviruses

—Influenza viruses types A, B, and C
—Other tick-borne orthomyxoviruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Papovaviruses

—All human papilloma viruses

Paramyxoviruses

—Newcastle disease virus
—Measles virus
—Mumps virus
—Parainfluenza viruses types 1, 2, 3, and 4
—Respiratory syncytial virus

Parvoviruses

—Human parvovirus (B19)

Picornaviruses

—Coxsackie viruses types A and B
—Echoviruses—all types
—Polioviruses—all types, wild and attenuated
—Rhinoviruses—all types
—Poxviruses—all types except Monkeypox virus (see Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions) and restricted poxviruses including Alastrim, Smallpox, and White-pox (see Section V–L, Footnotes and References of Sections I through IV)
—Reoviruses—all types including Coltivirus, human Rotavirus, and Orbivirus (Colorado tick fever virus)

Rhabdoviruses

—Rabies virus—all strains
—Vesicular stomatitis virus—laboratory adapted strains including VSV-Indiana, San Juan, and Glasgow

Togaviruses (see Alphaviruses and Flaviviruses)

—Rubivirus (rubella)

Appendix B–III. Risk Group 3 (RG3) Agents

RG3 agents are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available.

Appendix B–III–A. Risk Group 3 (RG3)—Bacterial Agents Including Rickettsia

—*Bartonella*
—*Brucella* including *B. abortus, B. canis, B. suis*
—*Burkholderia (Pseudomonas) mallei, B. pseudomallei*
—*Coxiella burnetii*
—*Francisella tularensis*
—*Mycobacterium bovis* (except BCG strain, see Appendix B–II–A, Risk Group 2 (RG2)—Bacterial Agents Including *Chlamydia*); M. tuberculosis
—*Pasteurella multocida* type B—''buffalo'' and other virulent strains
—*Rickettsia akari, R. australis, R. canada, R. conorii, R. prowazekii, R. rickettsii, R. siberica, R. tsutsugamushi, R. typhi (R. mooseri)*
—*Yersinia pestis*

Appendix B–III–B. Risk Group 3 (RG3)—Fungal Agents

—*Coccidioides immitis* (sporulating cultures; contaminated soil)
—*Histoplasma capsulatum, H. capsulatum var. duboisii*

Appendix B–III–C. Risk Group 3 (RG3)—Parasitic Agents

None

Appendix B–III–D. Risk Group 3 (RG3)—Viruses and Prions

Alphaviruses (Togaviruses)—Group A Arboviruses

—Semliki Forest virus
—St. Louis encephalitis virus
—Venezuelan equine encephalomyelitis virus (except the vaccine strain TC–83, see Appendix B–II–D, Risk Group 2 (RG2)—Viruses)
—Other viruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Arenaviruses

—Lymphocytic choriomeningitis virus (LCM) (neurotropic strains)

Bunyaviruses

—Hantaviruses including Hantaan virus
—Rift Valley fever virus

Flaviviruses (Togaviruses)—Group B Arboviruses

—Japanese encephalitis virus
—Yellow fever virus
—Other viruses as listed in the reference source (see Section V–C, Footnotes and References of Sections I through IV)

Poxviruses

—Monkeypox virus

Prions

—Transmissible spongioform encephalopathies (TME) agents (Creutzfeldt-Jakob disease and kuru agents) (for containment instruction, see Section V–C, Footnotes and References of Sections I through IV)

Retroviruses

—Human immunodeficiency virus (HIV) types 1 and 2
—Human T cell lymphotropic virus (HTLV) types 1 and 2
—Simian immunodeficiency virus (SIV)

Rhabdoviruses

—Vesicular stomatitis virus

Appendix B–IV. Risk Group 4 (RG4) Agents

RG4 agents are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available.

Appendix B–IV–A. Risk Group 4 (RG4)—Bacterial Agents

None

Appendix B–IV–B. Risk Group 4 (RG4)—Fungal Agents

None

Appendix B–IV–C. Risk Group 4 (RG4)—Parasitic Agents

None

Appendix B–IV–D. Risk Group 4 (RG4)—Viral Agents

Arenaviruses (Togaviruses)—Group A Arboviruses

—Guanarito virus
—Lassa virus
—Junin virus
—Machupo virus

Bunyaviruses (Nairovirus)

—Crimean-Congo hemorrhagic fever virus

Filoviruses

—Ebola virus
—Marburg virus

Flaviviruses (Togaviruses)—Group B Arboviruses

—Tick-borne encephalitis virus complex including Absetterov, Central European encephalitis, Hanzalova, Hypr, Kumlinge, Kyasanur Forest disease, Omsk hemorrhagic fever, and Russian spring-summer encephalitis viruses

Herpesviruses (alpha)

—Herpesvirus simiae (Herpes B or Monkey B virus)

Hemorrhagic fever agents and viruses as yet undefined.

Appendix B–V. Animal Viral Etiologic Agents in Common Use

The following list of animal etiologic agents is appended to the list of human etiologic agents. None of these agents is associated with disease in healthy adult humans; They are commonly used in laboratory experimental work.

A containment level appropriate for RG1 human agents is recommended for their use. For agents that are infectious to human cells, e.g., amphotropic and xenotropic strains of murine leukemia virus, a containment level appropriate for RG2 human agents is recommended.

Baculoviruses

Herpesviruses

—Herpesvirus ateles
—Herpesvirus saimiri
—Marek's disease virus
—Murine cytomegalovirus

Papovaviruses

—Bovine papilloma virus
—Polyoma virus
—Shope papilloma virus
—Simian virus 40 (SV40)

Retroviruses

—Avian leukosis virus
—Avian sarcoma virus
—Bovine leukemia virus
—Feline leukemia virus
—Feline sarcoma virus
—Gibbon leukemia virus
—Mason-Pfizer monkey virus
—Mouse mammary tumor virus
—Murine leukemia virus
—Murine sarcoma virus
—Rat leukemia virus

F. Amendments to Appendix C, Exemptions Under Section III–E–6

Appendix C–I–A is amended to read:

Appendix C–I–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) or cells known to be infected with these agents, (iv) experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules that are toxic for vertebrates (see Appendix

F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates), and (v) whole plants regenerated from plant cells and tissue cultures are covered by the exemption provided they remain axenic cultures even though they differentiate into embryonic tissue and regenerate into plantlets.

Appendix C–II–A is amended to read:

Appendix C–II–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) or cells known to be infected with these agents, may be conducted under containment conditions specified in Section III–C–2, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems, with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the cloning of toxin molecule genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates).

Appendix C–III–A is amended to read:

Appendix C–III–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) or cells known to be infected with these agents, may be conducted under containment conditions specified in Section III–C–2, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems, with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates).

Appendix C–IV–A is amended to read:

Appendix C–IV–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) or cells known to be infected with these agents, may be conducted under containment conditions specified in Section III–C–2, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems, with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates).

Appendix C–V–A is amended to read:

Appendix C–V–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) or cells known to be infected with these agents, may be conducted under containment conditions specified in Section III–C–2, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems, with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates).

Appendix C–VI is amended to read:

Appendix C–VI. Footnotes and References of Appendix C

Appencix C–VI–A. The NIH Director, with advice of the RAC, may revise the Appendix B classification for the purposes of these NIH Guidelines (see Section IV–C–1–b–(2)–(b), NIH Director-Specific Responsibilities). The revised list of organisms in each Risk Group is reprinted in Appendix B.

G. Amendments to Appendix H, Shipment

Appendix H–III is amended to read:

Appendix H–III. Footnotes and References of Appendix H

For further information on shipping etiologic agents contact: (i) The Centers for Disease Control and Prevention, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (ii) The U.S. Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–4545; or (iii) U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service (APHIS), Veterinary Services, National Center for Import-Export, Products Program, 4700 River Road, Unit 40, Riverdale, MD 20737. Phone: (301) 734–8499; Fax: (301) 734–8226.

H. Amendments to Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals

Appendix Q–III–C is amended to read:

Appendix Q–III–C. Risk Group 4 and restricted microorganisms (see Appendix B, Classification of Human Etiologic Agents on the Basis of Hazard, and Sections V–G and V–L, Footnotes and References of Sections I through IV) pose a high level of individual risk for acquiring life-threatening diseases to personnel and/or animals. To import animal or plant pathogens, special approval must be obtained from U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services, National Center for Import-Export, Products Program, 4700 River Road, Unit 40, Riverdale, MD 20737. Phone: (301) 734–8499; Fax: (301) 734–8226.

Laboratory staff shall be required to have specific and thorough training in handling extremely hazardous infectious agents, primary and secondary containment, standard and special practices, and laboratory design characteristics. The laboratory staff shall be supervised by knowledgeable scientists who are trained and experienced in working with these agents and in the special containment facilities.

Within work areas of the animal facility, all activities shall be confined to the specially equipped animal rooms or support areas. The maximum animal containment area and support areas shall have special engineering and design features to prevent the dissemination of microorganisms into the environment via exhaust air or waste disposal.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: December 14, 1995.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 96–689 Filed 1–18–96; 8:45 am]

BILLING CODE 4140–01–M

federal register

Friday
January 19, 1996

Part IV

Department of Health and Human Services

45 CFR Part 96

Tobacco Regulation for Substance Abuse Prevention and Treatment Block Grants; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 96

RIN 0930–AA01

Tobacco Regulation for Substance Abuse Prevention and Treatment Block Grants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Final rule.

SUMMARY: On August 26, 1993, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) to implement section 1926 of the Public Health Service (PHS) Act regarding the sale and distribution of tobacco products to individuals under the age of 18. The Secretary requested comments on the NPRM and gave 60 days for individuals to submit their written comments to the Department. The Secretary has considered the comments received during the open comment period and is issuing the final regulation in light of those comments.

EFFECTIVE DATE: February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Prakash L. Grover, Acting Director, Division of State Prevention Systems, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–7942.

SUPPLEMENTARY INFORMATION: The Department is finalizing the rule entitled ''Substance Abuse Prevention and Treatment Block Grants: Sale or Distribution of Tobacco Products to Individuals Under 18 Years of Age,'' which was published as a NPRM in the Federal Register on August 26, 1993 (58 FR 55156). The final rule is developed in accordance with section 1926 of the PHS Act, 42 U.S.C. 300x–26, as amended.

Relationship to proposed Food and Drug Regulations Restricting the Sale and Distribution of Tobacco Products

On August 10, 1995, President Clinton announced the issuance of proposed ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' by the Food and Drug Administration (FDA) (60 FR 41314, Aug. 11, 1995). If promulgated, these regulations would restrict minors' access to nicotine-containing tobacco products and would reduce the amount of positive imagery that makes these products attractive to young people. The basis for FDA's tentative conclusion establishing its jurisdiction over these tobacco products is set forth in the FDA NPRM's accompanying proposed jurisdictional analysis. (Federal Register, Volume 60, No. 155, page 41453, August 11, 1995).

The final rule being issued today will complement and be consistent with any rule that FDA promulgates, when and if FDA does so. While this final rule is directed to the States and the FDA proposal focuses on the tobacco industry and retailers, they are both designed to help address the serious public health problem caused by young people's use of and addiction to nicotine-containing tobacco products. By approaching this public health problem from different perspectives, these actions together would help achieve the President's goal of reducing the number of young people who use tobacco products.

The regulatory approaches reflect major differences in the statutory authorities of the respective agencies. In addition to requiring States to have in effect laws which prohibit the sale of tobacco products to minors as a condition of receipt of a grant, this rule requires that States enforce such laws, and meet certain negotiated rates of compliance so as not to suffer a reduction in block grant allotments as prescribed by law. On the other hand, the FDA proposal addresses the conduct of tobacco manufacturers, distributors, and retailers. The FDA proposal seeks to reduce young people's use of tobacco by placing certain restrictions on the sale, distribution, advertising, and promotion of tobacco products to minors. Thus, these two regulatory actions both address the need to reduce minors' access to tobacco products, and the FDA proposal further attempts, through its advertising provisions, to reduce the powerful appeal of tobacco products to children and adolescents.

Background on the Notice of Proposed Rulemaking and Summary of Responses to Public Comment

A. Notice of Proposed Rulemaking

The NPRM proposed regulations to implement section 1926 of the PHS Act. Section 1926 provides that ''the Secretary may not make a [Substance Abuse Prevention and Treatment block] grant to a State for the first applicable fiscal year and all subsequent fiscal years unless the State has in effect a law prohibiting any manufacturer, retailer or distributor of tobacco products from selling or distributing such products to any individual under the age of 18.'' According to section 1926(a)(2), States are to have such laws in place for receipt of FY 1994 Substance Abuse Prevention and Treatment (SAPT) Block Grant funds unless a State's legislature does not convene a regular session in FY 1993 or 1994, in which case a State must have such a law in place for receipt of FY 1995 funds. The Secretary proposed to implement this statutory provision by requiring States to have in place a law that prohibits the sale or distribution of any tobacco product to individuals under the age of 18 (minors) through any sales or distribution outlet. This would include sales or distribution from any location which sells at retail or otherwise distributes tobacco products to consumers, including locations that sell such products over-the-counter or through vending machines. Beyond this, the Secretary did not propose specifying the provisions of the States' laws.

Section 1926(b) of the PHS Act requires States, as a condition of receipt of a grant, to enforce such laws ''in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.'' In enforcing such laws, section 1926(b)(2)(A) requires the States to conduct random, unannounced inspections. The NPRM proposed a regulation to require States to have ''well-designed procedures'' in place for reducing the likelihood or prevalence of violations. Examples of such procedures were provided in the regulation. The Secretary also proposed that the State, at a minimum, enforce the law using both random and targeted unannounced inspections of both over-the-counter and vending machine outlets. It was proposed that the random, unannounced inspections be conducted annually and be conducted in such a way as to ensure a scientifically sound estimate of the success of enforcement actions being taken throughout the State.

Section 1926(b)(2)(B) of the PHS Act requires the States to annually submit to the Secretary a report describing the strategies and activities carried out by the State to enforce such law during the fiscal year for which the State is seeking the grant, and the extent of success the State has achieved in reducing the availability of tobacco products to minors. The NPRM essentially requested this information. As part of such information, the NPRM proposed, among other things, to require States to report on the results of the unannounced inspections and to provide a detailed description of how the unannounced inspections were conducted and the methods used to identify outlets to be inspected.

Section 1926(c) of the PHS Act requires the Secretary to determine whether the State has maintained compliance with the enforcement requirements of the statute. If the Secretary determines that a State has not maintained such compliance, the Secretary is required to decrease the Block Grant from 10 to 40 percent depending on the fiscal year involved. In determining enforcement compliance, the Secretary proposed the following: the State must demonstrate that its random, unannounced inspections were conducted in a scientifically sound manner and the data submitted by the State in the annual report must show that the percentage of the retailers or distributors involved in the random, unannounced inspections making illegal sales does not exceed 50 percent during the first applicable fiscal year, 40 percent in the second applicable fiscal year, 30 percent in the third applicable fiscal year and 20 percent in the fourth applicable fiscal year and subsequent fiscal years. If a State does not maintain material compliance with the above-mentioned criteria, the Secretary, in extraordinary circumstances, may consider a number of other factors such as a scientifically sound survey indicating that the State is making significant progress toward reducing use of tobacco products by minors.

B. Public Comment and Department's Response

During the 60-day comment period that ended on October 26, 1993, the Department received 354 letters providing comments on the NPRM. These comments spanned a wide range of concerns and issues. They presented a complex mix of support for and opposition to the Department's proposal. The preamble sections below summarize these views and provide the Department's responses to them.

General Comments

Numerous commenters, including State agencies, State legislators and Governors, claimed the NPRM was redundant and unnecessary. They argued that States currently have laws in place that prohibit the sale of tobacco to minors, and they felt the Department was forcing the States to create redundant laws.

This regulation does not require redundant or duplicate laws at the State level; rather it requires that States have in effect a law providing that it is unlawful for any manufacturer, retailer or distributor to sell or distribute tobacco products to individuals under the age of 18. In the event that a State does not have such a law in place, one is required if the State wishes to receive an SAPT Block Grant. At the time of passage of section 1926 of the PHS Act, the majority of States had laws in place that complied with the requirement of section 1926(a).

Many commenters raised concerns about the short timeframe within which the regulation was to be implemented. These concerns primarily centered on the time it would take to develop an inspection sampling frame and to design and conduct inspections. The Department recognizes the difficulties States may face in complying with these requirements and enforcing their laws sufficiently to reduce the extent to which tobacco products are available to individuals under the age of 18, as required by section 1926. As discussed later in this preamble, States will be provided time to develop an effective inspection system.

Some commenters argued that the Department was not allowing retailers and States time to demonstrate the success of industry or other State programs designed to restrict youth access. The Department notes that the statute specifically requires that, for most States, enforcement of their laws must occur in FY 1994 and that States must enforce their laws in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to minors. Section 1926 also requires States to conduct random, unannounced inspections. The Department cannot, therefore, delay the implementation of these statutory provisions.

Several commenters argued that the Department should place responsibility on minors for complying with this law rather than targeting retailers with such responsibility. Other commenters took the opposing view and cautioned against requiring penalties against minors for purchasing tobacco products.

The statute does not give the authority to the Department to require laws prohibiting the purchase of tobacco products by minors nor to regulate the conduct of retailers. However, States are required under section 1922 of the PHS Act to develop primary prevention activities to reduce tobacco use by minors in keeping with 45 CFR 96.125. The Preventive Health and Health Services Block Grant, sections 1901, *et seq.*, of the PHS Act, administered by the Centers for Disease Control and Prevention (CDC) also provides assistance to States to implement strategies to prevent tobacco use among all populations, including minors. These prevention strategies targeted to minors will serve to reinforce the enforcement strategies required by section 1926.

Definitions

A number of commenters believed that, by specifically including vending machines in the definition of a retail outlet and by requiring a separate reporting requirement, the Department was proposing more stringent enforcement requirements on outlets than are required by the law. In addition, many commenters from State agencies argued that most States do not have legislation in place with regard to controls on vending machines and, therefore, that they would have difficulty complying with the regulation if it included vending machines as a type of outlet.

The Department defines ''outlet'' as ''any location which sells at retail or otherwise distributes tobacco products to consumers including (but not limited to) locations that sell such products over-the-counter or through vending machines.'' The Department is requiring States to have laws in place during the first applicable fiscal year which make it illegal for a manufacturer, retailer, or distributor of tobacco products to sell or distribute any such products to an individual under the age of 18 through any sales or distribution outlet, including over-the-counter and vending machine sales. The Department believes that this construction of section 1926 of the PHS Act, i.e., covering vending machines, reasonably carries out the intent of Congress, and the Department believes that, if only over-the-counter sales were prohibited, minors would purchase tobacco products from vending machines as access to over-the-counter tobacco products becomes more difficult.

With respect to timing, we point out that States have now had several years since enactment of section 1926 and publication of our proposed rule, to pass necessary legislation and to take other steps to begin effective enforcement of their laws against sale and distribution to minors.

Random Unannounced Inspections

Many commenters suggested that the Department require States to use ''sting'' operations, in which minors would attempt to purchase tobacco products, either over-the-counter or from a vending machine, as the most efficient and effective method of carrying out such inspections. The NPRM gave the States flexibility in implementing the requirement for random, unannounced inspections, and it did not require ''stings.'' The Department sees no reason at this time to change that policy. While

there is considerable literature supporting the use of ''stings'' as an efficient and effective method of carrying out such inspections, there is no conclusive research to suggest that it is the only viable method that could be developed. Furthermore, the Department strongly supports giving States flexibility in devising methods to use in enforcing their laws.

However, the Department wants States to know that it does not know of any other valid alternative methods. Despite the NPRM's request for suggestions for alternative methods, and the many comments received opposing the use of ''stings,'' the Department has not identified evidence of any other workable or valid method of random, unannounced inspections for determining illegal sales. Moreover, the regulation's compliance level is based on the ''sting'' methodology, and the Department would need an empirical basis for converting results from one enforcement method to another to assess compliance.

In the light of these issues, the Department considered a range of options to protect both the States and the integrity of the program, including modifying the regulation to provide for formal approval by HHS of any alternative method. Another option would have been to specify in some detail either the methodology the Department would find acceptable or to define such terms as ''unannounced.'' Ultimately, the Department decided to leave the matter open and flexible, relying on the good judgment of State officials. The Department does, however, strongly urge any State that contemplates using an alternative method to work with the Department in advance of implementation to show that the method validly measures compliance through random, unannounced inspections, and to ensure that the inspection approach will produce the data necessary to determine that the State meets the compliance target.

Another large group of commenters opposed the use of minors in conducting compliance inspections because they feared that inspectors would attempt to entrap retailers by inspecting at busy times during the day, by attempting to purchase when the seller is distracted, by pressuring the seller, or by using individuals as decoys who do not look like minors. A number of commenters expressed concern that a child may not be sufficiently mature to understand undercover procedures and inadvertently entrap a retailer.

The Department is aware that entrapment may be a potential problem for retailers. Since the implementation of random, unannounced inspections is a State responsibility that is required by statute for receipt of an SAPT Block Grant, the Department expects States, if they choose to have minors participate in inspections, to develop procedures to address (and thereby avoid) these concerns and to educate officials regarding permissible and impermissible activities.

Many commenters argued that using minors in inspections could have a detrimental impact on minors participating in such operations (e.g., danger, exploitation). Among the fears expressed was the possibility of repercussions, in the event that the minor is discovered in his/her undercover role. Additionally, these commenters believed that undercover work is inherently dangerous and only to be undertaken by trained law enforcement officers. It was also feared that a child would be asked to take the witness stand and have to undergo cross examination.

The Department believes that the use of minors in inspections is very effective in gathering data and believes these inspections will show that proper training and adult supervision can reduce any potential risk of negative consequences toward youth. The Department does, however, expect States to provide all of the necessary precautions to safeguard the youth participants.

Commenters who favored requiring inspections involving the use of minors suggested the following guidelines: (a) minors should be supervised by adults, (b) minors should not be used in outlets they frequent or in their neighborhood so they may not be confronted later, (c) minors should not be involved in any confrontation with the retailer and, therefore, such confrontation should be made after the youth has left the store, and (d) minors should be 2–3 years younger in age and appearance than the legal age for purchase of tobacco products. Many commenters also suggested that minors be supervised by the State or an organization under contract to the State and that they be granted immunity from any State prohibition on the purchase of tobacco by minors.

Following publication of this rule, the Center for Substance Abuse Prevention (CSAP) will provide to States technical assistance and further guidance on state-of-the-art inspection processes, including guidelines, training and technical assistance, on which CSAP and CDC are collaborating. Comments on the NPRM are being considered in the development of these guidelines, training and technical assistance.

Several commenters urged the Department to make the inspection requirements more stringent. The Department believes that the inspection requirement as stated is sufficiently stringent to achieve the goals of section 1926 without imposing an undue burden on the States. Variations among States dictate the need for some flexibility in the design and conduct of the random, unannounced inspections.

A few of the Single State Agencies for alcohol and other drug (AOD) abuse prevention and treatment (SSAs) and some alcohol and other drug abuse providers that commented on the NPRM believed their involvement with the tobacco enforcement tasks of the law would hurt their position with the very citizens they aim to serve. They believed that clients would fear or avoid accessing services, because the providers would also be enforcing the laws.

First, it should be noted that section 1926 does not require that the inspections be performed by the SSAs or by the providers they contract with to provide AOD services. The required inspections may well be carried out by, or under the direction of, other agencies of State government. Moreover, even if SSAs do enforce the provision, the Department does not believe that they will drive away their target population or client base by implementing random, unannounced inspections. These inspections are not directed at individuals who purchase the tobacco products, rather at those who sell or distribute the products to youth. Neither the required law nor this regulation requires penalties against an individual for violating tobacco access laws. The Department feels that a client's perception of risk or fear of reprisal will be negligible and that AOD prevention and treatment providers will not be negatively impacted.

Comments were also received regarding the use of private entities performing inspections. The issue of State responsibility and accountability was raised regarding inspections conducted by private entities. Opponents raised concerns about ''vigilantism,'' since they believed that such inspections would be motivated by an anti-tobacco agenda and would be subjected to no formal accountability requirements. Supporters of the use of private entities to inspect outlets viewed such inspections as an assurance that individual citizens have the right to independently evaluate the State's progress. They argued that the public has the right to be involved in

inspections and feared any limitation on that right.

The Department does not require or prohibit the use of independent contractors or other type of organization to perform inspections of outlets for the State. It is the States' responsibility to demonstrate to the Department that random, unannounced inspections have been conducted in a fair, consistent, unbiased, planned manner that will provide useful data on the sale or distribution of tobacco products to minors.

Commenters offered numerous recommendations on alternate strategies for inspecting outlets. One commenter suggested using ''random inspections'' for scientific measures, ''routine inspections'' for compliance checks, and ''targeted inspections'' for enforcement of previous violators. Other recommendations included routine, pre-announced inspections and the inspection of outlet-sponsored ''give-a-way'' programs, as already specified by the NPRM.

While the Department believes that these suggested strategies are helpful, in the interest of providing States with appropriate flexibility, the Department will not prescribe how random, unannounced inspections are to be performed. Such approaches have been noted and may be included in further guidelines and training provided by the Department to inform States on all the options available to them in effectively carrying out these requirements.

Commenters argued that the targeted inspections required in the proposed regulation imply States' knowledge of prior violations and that such information does not currently exist and cannot be tested for in the first year. Others argued that targeted inspections exceed the intent of the law. Still others argued that targeted inspections should be required.

The Department has reviewed the proposed requirement for inspections targeted at outlets with previous violations. The Department believes that each State should have the flexibility to enforce its laws in a manner that can reasonably be expected to reduce availability of tobacco products to minors in light of that State's own unique circumstances. Therefore, we are not requiring that States conduct targeted inspections. States are reminded, however, that targeted inspections are an appropriate method of controlling youth access to tobacco products and may be considered by the Secretary in making a determination when a State is not found to be in substantial compliance with the State's negotiated inspection failure rate, which is discussed in more detail below.

Other Well-Designed Procedures

Many commenters argued that the proposed requirement for ''other well-designed procedures'' was excessive. Many commenters perceived the NPRM's requirement for ''other, well-designed procedures'' as forcing States to enact additional laws as a condition of funding, and thus exceeding the scope of the statute, congressional intent and Departmental discretion under the statute. Commenters further stated that existing laws and procedures are sufficient and that this requirement would necessitate new legislation that would interfere or conflict with existing laws.

Commenters representing SSAs claimed they would not be able to initiate ''other well-designed procedures'' in time to adequately comply with the regulation, especially since State legislatures meet briefly, or not at all, this year. Examples of procedures considered problematic and time-consuming to implement include licensing, controls on vending machines, and excise taxes. They believed that each of these procedures is a highly charged political issue and not easily passed legislatively. Some States argued that, given their need to enact enforcement legislation and the strength of the tobacco industry's opposition to such initiatives, they would need to receive an extension from the Department for compliance.

Many other commenters requested that the final rule mandate specific procedures (suggested strategies and examples found in the Preamble and the Model Law that was appended to it) rather than allow the flexibility provided in the NPRM. They stressed the need for a more stringent approach to the requirement and recommended that a wide range of mandates be included in the regulation, such as:

1. A tobacco sales or distribution licensing system;
2. A graduated schedule of penalties for violations;
3. A ban on vending machines;
4. Elimination of all vending machines in locations where minors have access; and
5. An updated version of the Model Law.

The Department has been persuaded by public comment to allow the States flexibility to determine which strategies are most appropriate for meeting the compliance target and enforcement requirements of the law and the regulation. To require ''other well-designed procedures'' at this time could, we believe, create unnecessary legislative obstacles for States, making it more difficult , not less, to achieve the goal of reducing the use of tobacco by youth. It would be counterproductive to the goal of increasing State enforcement activities if the final regulation were to require States to take additional legislative action to strengthen State tobacco control laws. We continue to believe that the adoption of ''other well designed procedures'' would enhance the effectiveness of State programs to curtail youth access to tobacco. However, during the initial phase of implementing this statute, State enforcement efforts will be more effective if States can devote time to the development of effective enforcement mechanisms without the additional burden of seeking legislative changes in State law. Therefore, the Department has eliminated the requirement of ''other well-designed procedures'' from the final rule.

The Department notes that the FDA's proposed regulations include several of the ''other well-designed procedures'' suggested in the preamble of the NPRM for this rule as well as other restrictions suggested by commenters (e.g., the elimination of vending machine sales and the prohibition of the sale of single cigarettes). The FDA proposal would not be directed toward affecting State laws. Rather, FDA proposes to affect the conduct of manufactures, distributors and retailers of tobacco products, a potentially effective and important means of reducing the numbers of children and adolescents who use and become addicted to tobacco products.

States should also be aware that, as part of each SAPT application, they are required to report what they have done to enforce the law during the previous fiscal year and what they intend to do during the fiscal year for which they are applying for funds. As discussed later, the Secretary may, in extraordinary circumstances, consider a number of factors other than the results of the random, unannounced inspections in determining compliance. One factor to be considered is the extent of the activities the State is carrying out in enforcing the law. Certainly, the suggestions in the preamble for the NPRM and the recommendations offered by commenters on the NPRM are viable ways that the States can enforce the provision.

States are reminded, however, that the Governor must assure the Department that the State will enforce its statute in a manner that will reasonably reduce the availability of tobacco products to minors. If a State fails to meet the negotiated compliance target as outlined

in this regulation and discussed below, the Department may seek additional information from such State before the Department will award the State a Block Grant. This information must be sufficient to provide reasonable assurance to the Department that the State will enforce its law, consistent with section 1926 of the PHS Act and the regulations.

Many comments focused attention on specific procedures that a State might implement and which were perceived by many as required. First, numerous commenters opposed the use of a licensing system for retailers. Some commenters opposed the NPRM's example of State licensing fees as a method of paying for the enforcement of this regulation, arguing that fees will hurt profits and lead to a loss of jobs. Commenters feared the regulatory nature of a licensing system, as States would be able to threaten retailers with suspension or revocation of their licenses for illegal sales of tobacco products by their employees. The licensing power, it is argued, could also be used to prohibit sales clerks under the age of 18 from handling tobacco products. Commenters also feared that a licensing system would allow regulators to pursue a broad anti-tobacco agenda. Finally, commenters believed that retailers would not be able to design and implement programs to comply with State and Federal substance abuse laws. Thus, they argued, a new, complex licensing program is not needed in order to limit the sale of tobacco products to minors. In contrast, many other commenters supported a licensing mechanism for the sale of tobacco. Some recommended a system with a graduated schedule of penalties for illegal sales, culminating in the loss of license.

The proposed regulation and Model Law explained how a licensing system could be used to enforce the States' laws effectively, with licensure fees and civil penalties funding both the random, unannounced inspections and other administrative costs. The Department did not, however, require a licensing system in the NPRM, and is not requiring one in the final rule. The Department believes, however, that a licensing system offers States an efficient method of identifying the total population of outlets for inspections and enforcement and that licensure fees can be a source of funds to pay for enforcement activities.

A small number of commenters recommended that the Department require either the elimination of tobacco vending machines or the elimination of vending machines in areas to which minors have access. They opposed the use of locking devices on vending machines because they believed such devices are ineffective. Other commenters supported using locking devices.

Bans and restrictions on vending machines and locking devices are viable options for States to consider in reducing tobacco sales to minors, but again, under this regulation the Department intends to allow States flexibility in the strategies they use to enforce tobacco control laws.

Several commenters opposed the Department's suggestion that States publish the names of, and boycott, outlets that have sold tobacco to individuals under the age of 18. They believed this is outside of the Department's authority and that such a suggestion should be removed from the regulation. Commenters argued that boycotts do not take into account attempts made by individual retailers to comply with the law.

The regulation does not require that States publicize the names or boycott outlets violating the law. However, studies have shown that these approaches can be effective in reducing violations (e.g., Turrisi, R.; Jaccard, J.; ''Cognitive and Attitudinal Factors in the Analysis of Alternatives to Drunk Driving,'' *Journal of Studies on Alcohol* 53(5) p. 405–414, 1992) and, therefore, are options a State may want to consider.

A number of commenters requested the elimination of the ''Model Law'' from the NPRM, arguing that, since the NPRM is a Federal document that ties compliance to funding, examples and suggestions were viewed as legal demands. Topics in the Model Law that received considerable comment included registration/licensure fees, suspension and revocation of licenses, licensure of outlets under common ownership, and graduated penalties against violators of the law.

The Model Law is not a required element of the regulation. The Department published both the Model law and the Inspector General's report with the NPRM to provide the public with further information regarding its position on the issue of youth access to tobacco products and to foster discussion at the State level about various legislative strategies for ensuring the enforcement of tobacco access laws. These documents will not be published with this final rule but will continue to be made available.

Commenters gave considerable attention to the issue of restricting local jurisdictions from passing more stringent statutes. They recommended that the Department require States to permit local governments to enact and enforce, as strong or stronger, local tobacco control laws to supplement the State's enforcement activities. Some commenters on this issue requested that the Department recommend a decrease in funding to any State that limits the power of local governments, as the Federal requirements should be seen as a minimum standard for tobacco access and control.

Many States currently preempt localities in enforcing or implementing some forms of tobacco control activities. However, as noted in the NPRM, the Federal statute and regulation are minimum requirements to which the States are held. In no way should they be considered as limiting, or requiring States to limit, the powers of local governments to enact or enforce tobacco control laws. As shown in the DHHS Inspector General's report (''Youth Access to Tobacco,'' Office of the Inspector General, U.S. Department of Health and Human Services, OEI–01–92–00880, page 7, August 1992), the majority of minors laws and enforcement efforts regarding the sale of tobacco have taken place at the local level. The Department encourages States to allow localities the flexibility to enact stricter laws or to more rigorously enforce tobacco control laws. However, in the interest of allowing States flexibility in implementing the law, the Department will neither prohibit the States from preempting, nor require them to preempt, local initiatives on youth access to tobacco products.

Some commenters representing a variety of interest groups argued that State AOD agencies do not have the authority to enforce the law, nor should they be involved in the enforcement of this law. Commenters also argued that law enforcement agencies are stretched so thinly that they would not be able to provide the needed support. Effective enforcement would, they suggested, require the creation of a large, costly, ''bureaucratic,'' State-wide authority, which they believe is contradictory to the AOD agencies' mission.

The Department does not specify which agency within the State is to be responsible for implementing the law. Enforcement of the law may be done by enforcement agencies, SSAs, private entities, or a combination of these and other organizations. The Department expects the Governor of each State to designate the most appropriate agency to assume lead responsibility for implementing these requirements.

It is, however, appropriate for the SSA to work with other State agencies to ensure that tobacco access laws are

enforced at the State level, as well as to work closely with State legislators and law enforcement entities to ensure that youth access and enforcement laws are being met. Each State will have to consider the relative resources and capabilities of its various State entities and make a determination as to the most appropriate enforcement agency. So as to provide the Department with sufficient information on the strategies to implement the law, the Department in its final rule requires that each State report in future applications on the agency or agencies designated by the Governor to be responsible for implementing the requirements of Section 1926.

Annual Reporting

A few commenters recommended that the Department establish stronger inspection requirements (e.g., three levels of inspection, more clear requirements for performing inspections, fewer inspection violations before the Department reduces funding, and the creation of a system of penalties against outlets), and that the States be required in their application materials to describe these activities in detail.

The Department is confident that the inspection process as outlined in the final rule is sufficient for determining whether the States are complying with the regulation. States on their own may choose to implement more stringent inspections and if they do, States are to explain what they have done in their application. In carrying out more stringent inspections, however, States should make sure that they can provide the information the Secretary requires in this regulation in order to make a determination of compliance.

Many commenters recommended greater specificity in the reporting requirements being made by the Department. The Department does not agree. The Department is requiring the States to provide information sufficient to meet the requirements of the regulation and no more. To require that States submit additional information, even though that information is not necessary for determining the completeness of the application or compliance with the criteria established in this regulation, would put an undue burden on the States.

Several commenters disagreed with the requirement for separate reporting for over-the-counter and vending machine sales in the annual report. They argued that it is excessive and implies a separate compliance target for over-the-counter and vending machine sales.

The Department believes that the commenters misunderstood the reporting requirements at issue. It should be noted that the Department is basing compliance on the aggregate results of both over-the-counter and vending machine inspections. The separate reporting requirements permit a better analysis of the results, and they allow the Secretary, in extraordinary circumstances, to consider the make-up of the outlets inspected in determining compliance, if the State does not meet the performance target as negotiated with the State. Of course, if the proposed FDA regulations' prohibition of vending machine sales goes into effect, we will revise our reporting forms to reflect this change. In the event a State prohibits vending machine sales of tobacco, the State will not have to include nonexistent vending machines in its sample or enter any data for vending machines.

Public Comment

There were several comments on the requirement that public comment shall be obtained and considered by the State prior to its submission of a report to the Secretary; most such comments were in favor. Those that disagreed were concerned about the burden thus represented and the timelines for reporting.

Section 1941 of the PHS Act requires States to offer the public an opportunity for comment on the State SAPT plan. In addition to this requirement, the final rule requires each State to submit for public comment the elements of the SAPT Block Grant report that relate to implementing this regulation. The Department does not believe that this is an excessive burden on the States nor that it will create any unnecessary delay in the submission of applications, since the States can send this portion of the report out for public comment at the same time, and in the same way, as they send the plan.

Scientifically Sound Sampling Frame and Design

Many comments were received regarding the requirement for a scientifically sound estimate based on an adequate sample design of the inspection effort. The majority of the commenters disagreed with this requirement. Both those who agreed with the requirement and those who disagreed were concerned about the States' ability to carry out this requirement without greater specificity, time and funding. Many of the commenters believed for these reasons that the sampling requirement is not fair, is unrealistic or is confusing. Many of the commenters recommended that the States either be given more time to develop scientifically sound estimates of success, be given more flexibility, or that the requirement be eliminated.

A few commenters made specific suggestions as to how to improve the guidance on sample design, including mandating inspections that would assure adequate representation of the universe, and requiring that the sample represent the ethnicity, gender and age distributions of the community in which the purchases are made.

The Department believes that it is necessary for the States to conduct probability samples of outlets to be inspected so that the Department has a reliable measure of how the law is being enforced throughout the individual States. The Department does not believe the States should be permitted to focus their efforts on locations that are unlikely to have a substantial population of underage persons. A requirement to draw a probability sample also will ensure that the States select outlets accessible to youth. The Department is available to provide technical assistance, training and guidelines with regard to the development of the sample designs.

Some commenters believe that the requirement for a scientifically sound sampling frame and design implies State enactment of licensure laws to provide a sampling base, since the regulation does not provide a clear design for a scientifically sound sampling frame.

The Department believes there are a variety of methods whereby a State may develop a sound sampling design in the absence of a licensing or formal registration system. At the outset, it should be noted that, sample designs will vary by State. States with complete centralized license lists can use these lists in developing a sampling frame. Other States can utilize commercial business lists that can be purchased from a variety of sources. These lists may not be as complete as license lists (particularly for small businesses and street vendors), in reflecting the total universe of tobacco outlets in the State, and, therefore, States may have to supplement them. Other options, which are not as desirable and may have to be supplemented include area sampling, community sampling, or sampling from Bureau of Alcohol, Tobacco, and Firearms (BATF) tax rolls.

It should be noted that the Department views an outlet as any ''location'' which sells or distributes tobacco products. The Department will consider for sampling purposes multiple sales points within one location to be a single outlet. For example, a motel that

has a shop that sells tobacco products over the counter, and has several vending machines which also sell tobacco products, would be considered one location.

Oversampling

Some commenters were concerned about the requirement that the distribution of inspection sites reflect the distribution of minors in the States, and that inspections be conducted at times when, or locations where, minors are more likely to purchase, (e.g., near schools, in malls, movie theaters, etc.). This requirement is viewed as complicating the process of determining and collecting baseline and effectiveness data and increasing the overall costs of performing inspections. The Department does not wish to put unnecessary obstacles in the paths of states wishing to achieve the compliance goal of the regulation and reduce illegal tobacco sales to minors. The Department believes there are many ways States can ensure that the inspections are conducted in such a way as to ensure an appropriate probability sample of outlets which are accessible to youth and is revising the regulation to reflect this change.

Timeframe

Numerous commenters argued that the Department is not allowing States adequate time to comply with the law and the proposed regulation, specifically with required inspections, reporting, and implementation of ''other well-designed procedures.'' Although many commenters believed that compliance with the inspection percentage targets is attainable, many claimed the Department is not accounting for the lead time necessary for a State to make the required legislative changes and to establish inspection sampling designs and systems.

The Department agrees that additional time is needed by States to implement an inspection process and to make the legislative and procedural changes that may be necessary for effective enforcement of their youth access laws. The Department is, therefore, revising the regulation so that for the first and second applicable fiscal years, the State must, at a minimum, conduct annually a reasonable number of random, unannounced inspections of outlets to ensure compliance with the law and plan and begin to implement any other actions which the State believes are necessary to enforce the law.

For the third applicable fiscal year and all subsequent fiscal years, the States are to conduct annual, random, unannounced inspections of both over-the-counter and vending machine outlets. These random, unannounced inspections are to cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. Random, unannounced inspections are to be conducted in such a way as to conform to commonly accepted statistical standards and confidence levels.

Implementation of the negotiated percentage targets will not begin until the fourth applicable fiscal year as discussed in the next section. The Department expects that while some States will quickly achieve the *Healthy People 2000* objective for retail enforcement, others will have greater success in reaching this goal if given additional time to design and initiate enforcement of their statutes.[1] Further, the Department believes that this compliance schedule accommodates the needs of States for a reasonable period of time to organize their enforcement activities.

Compliance

Some commenters believed that the Department had exceeded its authority in establishing performance criteria and suggested that the Department only require that States make a good faith effort to enforce the laws. Several other commenters suggested that the standards should be based on State-specific baselines, while several others suggested the standards should disallow State-specific measures and develop national standards. Several commenters believed that the States are being held accountable for a Federal approach, that the standards do not take into consideration the variance among States and do not recognize their differences.

The Department continues to believe that the national objective should be to substantially reduce illegal sales of tobacco products to minors, and we believe that all States can make significant progress in reducing illegal tobacco sales if reasonable actions are taken to enforce each State's statute. We recognize that enforcement of existing State statutes cannot, in isolation, achieve the President's goal for significantly reducing the initiation of tobacco use by children and adolescents. Meaningful enforcement of State laws does, however, constitute an important step in reducing the availability of tobacco to children and youth.

After considering the circumstances that now exist in the States, we believe that achieving a 20 percent failure rate in the random, unannounced inspections required by the statute is a reasonable objective towards which States should strive. State enforcement of access laws can significantly reduce tobacco use by children. We are, however, convinced that the best results that can be obtained under this regulation will be achieved by allowing States flexibility in designing enforcement strategies to reach the 20 percent goal for retail enforcement recommended in Healthy People 2000. Therefore, the Department is establishing a 20 percent failure rate as a performance objective that States should achieve within several years, subject to some variation in schedule. After carefully considering the public comment on this issue, the Department now believes that establishing a flexible schedule that is adapted to the needs of individual States for the uniform schedule proposed in the NPRM strengthens the regulation. Tailoring the timetable to the circumstances of the States enables the Secretary to establish quicker schedules for those States which have already made substantial progress in enforcing their statutes. Somewhat longer periods of time are more appropriate for the States that have further to go. Providing these States additional time in the initial phase of implementing their enforcement activities will increase the chance that they will succeed in achieving the goals rather than fail.

To ensure that States are working toward meeting and exceeding that objective, but allow some variation in time to achieve it, the Secretary will negotiate annually with each State an interim performance objective the State should meet each year. It is our expectation that all States will reach and surpass the performance objective of 20 percent within several years. The target level negotiated with each State should demonstrate each State's commitment to furthering the ultimate goal of reducing tobacco use by underage youth, reasonably reducing the availability of tobacco products to minors and showing immediate and sustained progress toward meeting the 20 percent performance objective.

[1] U.S. Department of Health and Human Services, Public Health Service, *Healthy People 2000: Midcourse Review and 1995 Revisions*, DHHS Publication No. 017–001–00526–6 (Washington, D.C.: U.S. Government Printing Office, 1995), p. 173. Services and Protection Objective 3.13 proposes to ''enact in 50 States and the District of Columbia laws prohibiting the sale and distribution of tobacco products to youth younger than age 18. Enforce these laws so that the buy rate in compliance checks conducted in all 50 States and the District of Columbia is no higher than 20 percent.''

The results of the random, unannounced inspections in the third applicable fiscal year (which are to be conducted in such a way as to provide a probability sample of outlets that youth are likely to frequent) will serve as the base line. State specific maximum failure rates will be negotiated for the first time for applications for the fourth applicable fiscal year which for most States is FY 1997. States are encouraged to complete their inspections for the third and all subsequent applicable fiscal years in time to permit negotiations for the next fiscal year's application.

Comments on the compliance standards (allowable rate of inspection violations) were mixed. A large number of commenters requested that the compliance standards be made more stringent. They provided several suggestions on how the standards could be strengthened, particularly in the fourth year and beyond (either five percent or ten percent failure rates).

Several commenters suggested that the Department eliminate the compliance standards, stating that they are too stringent, arbitrary or prescriptive. A few stated that the standards will serve as a disincentive to accurate enforcement and reporting. A few commented that the standards will be impossible to evaluate. Some expressed concern that this approach could result in enforcement by the Department rather than by the States.

Several commenters argued that the States are being held accountable for compliance standards founded on faulty premises established by precursor studies conducted at the local level, and that the resulting reduction in the failure rate of random, unannounced inspections cannot be applied to the State level. Further, they argued that the reduction in the number of inspection failures resulted from public education and notification of inspection efforts.

The goal of the statute is to reduce the extent to which tobacco products are available to minors, which is critical to reducing tobacco use among minors. The Department believes to achieve a meaningful reduction in illegal tobacco sales to minors there must be a measurable performance objective. As discussed below, the Department has selected 20 percent as the appropriate objective.

The Department has decided, however, based on the comments received that a more effective and efficient program will result from eliminating the one-size-fits-all standards proposed in the NPRM that would establish a uniform schedule of annual failure rate reductions from 50 to 40 to 30 to 20 percent. In its place, the Secretary will negotiate a strategy with each State for achieving the performance objective over a period of several years. The Department believes this approach offers States the flexibility needed to achieve the objective. We would hope, of course, that when each state achieves the 20 percent performance objective, they would continue to seek even lower levels, eventually eliminating illegal sales to minors.

With regard to setting the performance objective at 20 percent, while there has been little experience with State level enforcement and, therefore, no studies to document appropriate expectations for State-wide inspections, the Department believes that the local studies do provide a reasonable starting point. Several studies in which unannounced inspections were used to measure access by minors to tobacco products show a significant reduction in the availability of such products when enforcement is strengthened. These studies reflect a sales rate of tobacco products to minors of 24 percent to 39 percent within one to two years of such enforcement efforts (see studies cited in NPRM, 58 FR 45157). Other studies have shown that moderate enforcement efforts such as officially sponsored ''stings'' and citations led to levels of illegal sales of close to zero percent (see discussion in economic analysis, below). These studies suggest that States using reasonable enforcement measures should be able to reduce illicit sales of tobacco products to minors to 20 percent or below over a relatively short period of time. Under the final rule, that time period will be negotiated with each State.

The Department will also work to assist States by supporting research and providing technical assistance helpful in determining the type of enforcement measures and control strategies that are most effective. This information will be helpful to States in improving their enforcement measures and further reducing their failure rates.

Many commenters expressed concern that all retailers were being held accountable for the mistakes of a few and that the sampling frame would only result in a suggested or ''estimated'' overall compliance level against which penalties would be determined. They were concerned about the use of a sample to ''estimate'' overall compliance.

It appears that these commenters misunderstood the Department's intent. The penalties prescribed by section 1926(c) of the PHS Act are applied to the State by means of a reduction in the amount of the SAPT Block Grant funds they receive. The penalties are not applied to retailers.

Secretary's Discretion

Several commenters expressed concern regarding the discretion given to the Secretary in determining compliance in extraordinary circumstances. They feared that such discretion will ultimately undermine the intent of the regulation. A number of commenters raised issues regarding cases in which a State does not meet the compliance criteria. A large number thought that the term ''substantial'' should be deleted because it undermined the Department's ability to carry out the penalties stipulated in the law. From the alternative perspective, a few commenters believed that the significant efforts, activities and progress of the States should be considered by the Secretary in making a compliance determination. A few thought a waiver should be given only after a public hearing. Lastly, there were a few commenters who suggested that the Department require enactment of one or more of the ''other procedures'' cited in the NPRM in the event that either a State is found out of compliance after the first year, or that waivers not be applied, in the event that the State failed to enact the recommended ''other well-designed procedures.'' The regulation permits the Secretary to, in extraordinary circumstances, consider other factors in determining compliance with the regulation, in the event that the State fails to adequately comply with the requirements. As indicated these will only be considered in extraordinary circumstances. In these instances, the Department will review a number of factors including appropriate survey data indicating that, in the previous year, significant progress has been made toward reducing the use of tobacco products by minors. It will be the responsibility of the State to explain the extraordinary circumstance and to provide the information for the Secretary to consider.

Moreover, the Department reminds the States that the Secretary, in extraordinary circumstances, may consider other well-designed procedures, in addition to the overall success a State achieves in reducing the availability of tobacco products to minors, in making a determination regarding a State which does not meet its negotiated goal. The Department recognizes that some States may implement other approaches, along with their inspection system, which may effectively reduce youth access and use

of tobacco products. The Secretary may also consider the State's efforts with respect to targeted inspections and enforcement measures toward those outlets known to be selling or distributing tobacco products to minors.

The Department notes that this discretion would be used in only extraordinary circumstances, and a State must clearly document the information that it wishes the Secretary to consider in determining whether to exercise that discretion. The Department believes that allowing the Secretary to take other factors into consideration, in extraordinary circumstances, will not undermine the intent of the law which is to reduce youth access to tobacco products.

Compliance Penalties

Several commenters expressed concern about the reduction in the Block Grant allotment for non-compliance. They considered the reduction to be punitive, unfair and too prescriptive. They further stated that the reduction would weaken or harm the alcohol and other drug abuse prevention and treatment systems. Lastly, they expressed concern that the State AOD agencies have no control over the situation since they are neither responsible for tobacco programs nor for law enforcement.

The Department appreciates the concerns expressed regarding the potential reduction in the Block Grant allotment and the negative impact of such a reduction on the alcohol and other drug abuse prevention and treatment systems. However, the Department also recognizes the importance of strong incentives for meeting the performance objective and notes that the reduction in allotment for non-compliance is legislated and not subject to change through the regulatory process.

Funding

Many commenters opposed this regulation with the argument that it imposes an unfunded mandate upon States from the Federal Government, in contradiction of the Administration's policies on unfunded mandates.

Commenters representing a wide variety of groups had serious concerns about how to fund the overall implementation of § 1926, especially the random, unannounced inspections. Many opposed the regulation, fearing they would be forced to pay for enforcement, such as merchants who believed that they would bear the cost of implementing and enforcing this regulation through licensing fees and penalties. State agencies believed they would be forced to shoulder the costs by diverting funds away from AOD prevention, treatment and other law enforcement activities. They claimed that alcohol and other drug abuse programs and violence programs would have to be cut, in order to pay for the enforcement of tobacco laws. Government representatives believed that taxes would have to be raised or licensure fees enacted to comply with the regulation. Several argued that Block Grant funds, or Federal funds from another source, should be used to pay for the cost of complying with this requirement.

Many commenters objected to the restriction on the use of the Block Grant program funds. Many commenters also argued that the five percent allotment for administrative expenses is already too small for current administrative costs of the Block Grant, without factoring in tobacco law enforcement. They feared that tobacco law enforcement would force AOD programs to be cut, and that some States would not be able to comply. Others argued that youth access should be considered a prevention activity and, therefore, the Block Grant program funds should be used to fund the enforcement.

Many expressed concern that the sampling frame requirement is costly, time-consuming, and labor-intensive. Commenters additionally argued that the cost involved for the enforcement of this law may result in a shift of resources out of needed, publicly accepted alcohol and other drug abuse prevention, treatment and enforcement activities into tobacco enforcement. They argued that social services and law enforcement are often housed in agencies other than those administering the SAPT Block Grant, giving them no inherent stake in complying with the regulation, especially since the cost for enforcement is expected to be high.

The Department recognizes the difficult funding decisions and the need to balance competing program priorities which States will face in order to implement this law. Inspections and enforcement are, however, requirements of the law, requirements that the Department cannot waive.

The Department wishes to explain the availability of Federal Block Grant funding for implementation of these statutory requirements. States may use funds from the Centers for Disease Control and Prevention's Preventive Health and Health Services Block Grant (42 U.S.C. 300w, *et seq.*), for sample design, inspection and other enforcement purposes, as funds from this block grant are available to assist States in conducting activities consistent with making progress toward achieving the objectives established by the Secretary for the health status of the Nation's population for the year 2000.[2]

States may also use funds from the primary prevention setaside of their SAPT Block Grant allotment, under 45 CFR 96.124(b)(1), to fund their sample design and inspection costs. States may not, however, use funds from the SAPT Block Grant to pay for other activities. To allow States to use SAPT Block Grant funds for such activities as court costs, for example, could significantly reduce the amount of funds available for substance abuse services.

Other Comments

The Department, in numerous instances in the NPRM, requested input and suggestions from commenters on feasible, objective, cost-effective approaches to enforcement of the law and compliance with the regulation. Commenters provided the Department with a large number of recommendations, in the following categories:

(1) Control of Tobacco Products

a. States should eliminate all forms of free distribution (samples, coupon redemption, etc.);

b. States should require all tobacco products to be kept behind the counter at outlets;

c. States should ban the sale of single cigarettes;

d. States should use locking devices on vending machines;

e. States should not use locking devices on vending machines; and

f. States should require that all tobacco products to be kept *locked* behind the counter.

(2) Educational Activities

a. States should provide public information and education campaigns on the prohibition of sales and distribution of tobacco; and

b. States should offer prevention and education activities.

(3) Procedural Activities

a. States should detail procedures for retailers to comply with the law (signs notifying public of law, request for ID, etc.);

[2] Section 1904(a)(1)(A) of the Public Health Service Act (42 U.S.C. 300w–3) authorizes the use of Preventive Health and Health Services Block Grant funds for "Activities consistent with making progress toward achieving the objectives established by the Secretary for the health status of the population of the United States for the year 2000. See also *Healthy People 2000: Midcourse Review and 1995 Revisions*, DHHS Publication No. (PHS), pp. 35–39.

b. Outlets should check the identification of all tobacco purchasers; and

c. Outlets should check State-issued identifications.

(4) Assessment/Survey Activities

a. States should base local assessments on the cost of sting operations;

b. States should base local assessments on passive observations of apparent age of purchasers; and

c. States should use self-report data from minors via survey questions about their success at purchasing tobacco products.

(5) Punitive Activities

a. States should allow for community action taken against violators;

b. States should increase fines for violations;

c. States should not punish minors for violating the law; and

d. States should punish minors for violating the law.

Although this regulation will not require that States implement such activities, States may wish to review this list of suggestions as possible activities or approaches to reduce the likelihood of violations of the law, as well as to reduce the use of tobacco products by children and youth.

Economic Impact

Executive Order 12866 requires the Department to analyze the costs and benefits of any regulation that is likely to have an economic impact of $100 million or more or meet other thresholds specified in the Order. In this assessment, the Department is to pay particular attention to the consistency of the regulatory action with the statutory mandate, and to avoiding interference with State, local, and tribal governments in the exercise of their governmental functions (§ 6(a) of the Order). In addition, as required by the Regulatory Flexibility Act, the Department prepares a Regulatory Flexibility Analysis for any regulation that is likely to have a ''significant'' economic impact on a ''substantial number'' of small entities, and analyze alternatives that may lessen impact on them. In the preamble to the proposed rule, the Department estimated compliance costs at about $50 million for States and up to $100 million for private business, and benefits at potentially billions of dollars a year. In the analysis that follows, the Department has summarized the original analysis, responded to comments on it, and incorporated additional information, including a discussion of the use of Block Grant funds to pay for the sample design and inspection requirements of this statute. Together with the remainder of the preamble, this assessment constitutes compliance with each of these legal requirements. This rule was reviewed by OMB pursuant to Executive Order 12866 as an economically significant regulatory action.

The FDA has independently estimated the effects of its proposal (drawing both on original analysis and substantial additional information), and the economic analysis and background information provided in its NPRM are presented in considerably greater depth than that presented here. The conclusions in both analyses are broadly consistent.

The Centers for Disease Control and Prevention (CDC) estimates that at present approximately 1 million underage youth and children become regular smokers each year. A major cause is ready, illegal access to tobacco products. Three-fourths or more of all outlets sell illegally to minors, due in part to insufficient enforcement efforts, which encourage a scoff-law attitude among merchants. A recent study (''Design of Inspection Surveys for Vendor Compliance with Restrictions on Tobacco Sales to Minors,'' April 1994, prepared by Rick L. Williams *et al.* of the Batelle Corporation) estimates that 73 per cent of all over-the-counter outlets and 96 per cent of all vending machine outlets sell tobacco products to minors.

The Department believes that aggressive and consistent enforcement efforts by States are likely to reduce substantially illegal tobacco sales. However, in the absence of tobacco control measures reducing availability and the allure of tobacco products to youth, State enforcement activities may not be fully effective. In addition, even the most successful enforcement activities may lead to partially offsetting tactics by youth, such as older youth legally buying cigarettes and reselling or giving them to younger youth. In such an event, the actual impact of more effective State enforcement may not achieve maximum progress in meeting the goal of reducing the use of tobacco products by youth and children. Furthermore, the volume of illegal sales is likely to vary depending on the number and location of stores which continue to sell illegally. If, for example, the proportion of outlets selling to minors were to be reduced by two-thirds, and there are three outlets located within a two block area, it is likely that youth would have access to tobacco at one of these three outlets. Although the effect on the number of outlets selling tobacco to youth may be substantial, the inconvenience to youth might be so small as to reduce illegal sales only slightly. Thus, the potential range of outcomes under serious enforcement may vary in the extent to which it affects the prevalence of youth smoking.

Estimates of annual spending on cigarettes by youth range from about $500 million to over $1.5 billion. (See consumption estimates by DiFranza, J and Tye, J, ''Who Profits from Tobacco Sales to Children?'' JAMA, 263:20 (1990): 2784–2787; and Cummings, K.M. et al., ''The Illegal Sale of Cigarettes to U.S. Minors: Estimates by State'' American Journal of Public Health 84:2 (1994): 300–302.) Whereas the original economic analysis used the higher estimate, this analysis relies on the lower figure presented in the more recent study. Thus, as little as a 20 percent total reduction in sales would have an economic effect of $100 million.

In light of the penalty provision contained in the statute, States will have a strong incentive to reduce the level of illegal sales. The outcome, however, will depend on the nature and extent of the enforcement actions taken by the States and, if the FDA proposed restrictions on access and appeal were made final, the synergistic effect such efforts would have when combined with such additional control measures, and with any supplemental tobacco control measures the States may adopt.

In addition to overall reductions in tobacco sales, enforcement of the law will affect the retail market. The money which would have been spent on tobacco products will be spent on other goods and services. An equivalent amount may be spent in the same stores which sell tobacco products. However, in some instances (e.g., sales from free-standing vending machines) it is not clear that alternative products will raise the same volume of revenue for a specific store. Therefore, the statute and the final rule may have a significant effect on some small businesses that currently sell tobacco products to minors.

In this analysis, the Department focuses mainly on cigarette sales, which account for the overwhelming majority of tobacco product sales to youth. Almost all of the analysis is, however, equally applicable to snuff and chewing tobacco.

Magnitude of Effects

For purposes of the analysis, the Department assumes that States will take significant actions to reduce the number of outlets selling tobacco products illegally, achieving a rate of

illegal sales below 20 percent within five years. Since about three-fourths of all retail stores and almost all vending machine outlets now sell to minors, a State could suffer a serious financial penalty if it failed to bring the great majority of these outlets into compliance within the specified periods. Based on limited data, the Department is aware that some localities have been highly successful in reducing failure rates to relatively low levels. For example, the Department is aware of one community—Woodbridge, Illinois—that used a variety of control methods to reach a failure rate of less than 5 percent. While State compliance results may not typically reflect the actual rate of sales to minors, cigarette use by youth decreased by half in this same community, despite the availability of outlets selling illegally in adjoining areas. In another community—Everett, Washington—a similar youth access effort had smaller effects on tobacco use. Unfortunately, there is no scientific basis on which to make a definitive statewide or national projection, absent a history of far stronger enforcement efforts by States and across a wider range of communities.

The Department expects that actual violation levels in most States, after successful implementation of State enforcement programs, will be driven lower than the percentage compliance targets to be negotiated for the short run. The Department does not know, however, what level of compliance the States will achieve on average, or precisely how that level will translate into reductions in youth smoking. It is probable, however, that the reduction in tobacco use by youth and children would be much less than the reduction in illegal sales measured by the State's failure rate. In the original economic analysis the Department suggested that a one-third to two-thirds reduction in smoking might be possible through improved enforcement. The Department now believes that a significantly lower estimate is more realistic given the uncertainties implicit in varying levels of State enforcement and the absence of meaningful controls on tobacco advertising and promotion.

The economic analysis in FDA's proposed regulations implicitly considered the impact of State programs in concluding that ''if aggressively implemented and supported by both industry and public sector entities, comprehensive programs designed to discourage youthful tobacco consumption could reasonably achieve the *Healthy People 2000* goal of halting the onset of smoking for at least half, or 500,000, of the 1,000,000 youngsters who presently start to smoke each year.'' [3] However, in the absence of adequate empirical data, FDA could not determine the independent contribution of each proposed restriction. Similarly, in view of the substantial uncertainty regarding future State enforcement efforts, the potential for offsetting industry promotional tactics, and the willingness of older youth to purchase tobacco products for younger youth, the Department is unable to make a precise quantitative estimate of the impact of this regulation on youth smoking rates. The Department expects, however, that any plausible estimate would exceed one-tenth, but fall short of one-third. Nevertheless, the analysis below demonstrates that even very modest declines in the rate of adolescent smoking, much smaller than those reasonably anticipated, would yield substantial health benefits among adults.

[3] Federal Register, Vol. 60, No. 155, August 11, 1995, p. 41362.

A reduction in teen smoking implies a considerable reduction in adult smoking, over time. Since approximately 70 percent of adult daily smokers became daily cigarette smokers by age 18, a substantial number of the youth deterred from smoking by this regulation would become nonsmoking adults. Moreover, this effect would be over and above the effects of smoking cessation programs, education, family pressures, and other public and private influences on the prevalence of smoking. While the Department estimates a probable reduction in cigarette sales of millions of dollars a year in the near term, this reduction would translate into an annual multi-billion dollar effect over the long run, as each cohort of non-smoking youth ages into non-smoking adults. FDA calculated the benefits of tobacco regulation by conservatively assuming that only one-half of the teenagers deterred from smoking would remain nonsmokers as adults.[4] That analysis, which was largely based on data from the American Cancer Society's Cancer Prevention Study II, implies that reducing the number of smoking youth by as little as 1 percent would prevent 1,200 future smoking-related deaths, gaining over 18,000 life-years, among each year's cohort of teenagers who would otherwise begin to smoke. As the projected results are proportional to the assumed effectiveness rate, this model also indicates that a 5 percent reduction in youth smoking would prevent 6,000 premature deaths, a 10 percent reduction 12,000 premature deaths and a 20 percent reduction 24,000 premature deaths among that teenage cohort. The Department believes these projections are plausible and is convinced that even very small decreases in youth tobacco consumption would yield substantial health improvements.

Benefit Estimates

The benefits of the regulation lie primarily in reducing the costs of the adverse health effects resulting from tobacco use. The CDC estimated smoking-attributable medical costs at $50 billion in 1993. The Office of Technology Assessment counted both medical costs and lost earnings to calculate $68 billion worth of smoking-related costs in 1990. For its assessment of future regulatory consequences, FDA relied on incidence-based costs of smoking, calculated over the lifetime of each year's new cohort of potential smokers. This methodology, which is described fully in the FDA economic analysis, derived values for reduced medical costs and lost wages from several earlier economic studies, particularly T.A. Hodgson, ''Cigarette Smoking and Lifetime Medical Expenditures,'' *The Milbank Quarterly*, vol. 70, No. 1, p. 91, 1992, and D.P. Rice *et al.* ''The Economic Costs of the Health Effects of Smoking, 1984, The Milbank Quarterly, vol. 64, No. 4, p. 526, 1986. In addition, FDA considered various economic analyses to support its use of a $2.5 million willingness-to-pay estimate to represent each smoking-related fatality averted. (Most notably Fisher, A. *et al.*, ''The Value of Reducing Risks of Death: A Note on New Evidence,'' Journal of Policy Analysis and Management, vol. 8, No. 1, pp. 88–100, 1989; and Viscusi, W.K., ''Fatal Tradeoffs: Public and Private Responsibilities for Risk,'' Oxford University Press, p. 24, 1992.)

As explained above, the Department now believes that the uncertainty surrounding the forthcoming responses from State enforcement agencies, industry suppliers, and adolescent users of tobacco products does not allow a precise quantitative forecast of the independent effect of this rule on adolescent tobacco use. Nevertheless, application of the benefits valuation methodology summarized above and described fully in the FDA analysis, demonstrates that even if this regulation were to achieve effectiveness rates for less than the one-tenth to one-third level believed plausible, the value of the realized benefits would reach hundreds of millions, if not billions of dollars per year. Table 1 displays these potential projections using prevent value discount rates of both 3 and 7 percent, respectively.

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[4] Ibid., p. 41360.

BENEFITS SUMMARY (Table 1)

ANNUAL ILLNESS-RELATED BENEFITS OF ALTERNATIVE EFFECTIVENESS RATES

Fraction of Teenage Cohort Deterred	Fewer Teenagers who smoke as adults * (No.)	Smoking-related deaths eventually averted (No.)	Life-Years Saved (No.)	Medical Savings ($B)	Morbidity-Related Productivity Savings ($B)	Mortality-Related Willingness-to-Pay		Total Benefits	
						Life-Yrs. Saved ($B)	Deaths Averted ($B)	Low ($B)	High ($B)
3% Discount Rate for Monetary Values									
1/3	167,000	40,100	603,600	1.8	0.6	16.4	26.4	18.8	28.8
1/5	100,000	24,100	362,100	1.1	0.4	9.9	15.9	11.4	17.4
1/10	50,000	12,000	181,100	0.5	0.2	4.9	7.9	5.6	8.6
1/20	25,000	6,000	90,500	0.3	0.1	2.5	4.0	2.9	4.4
1/100	5,000	1,200	18,100	0.10	0.02	0.50	0.80	0.62	0.92
7% Discount Rate for Monetary Values									
1/3	167,000	40,100	603,000	0.9	0.4	4.9	5.7	6.2	7.0
1/5	100,000	24,100	362,100	0.5	0.2	2.9	3.4	3.6	4.1
1/10	50,000	12,000	181,100	0.3	0.1	1.5	1.7	1.9	2.1
1/20	25,000	6,000	90,500	0.1	0.1	0.7	0.9	0.9	1.1
1/100	5,000	1,200	18,100	0.03	0.01	0.15	0.17	0.19	0.21

* Assumes 50% of adolescents who are deterred from smoking refrain as adults.

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An alternative benefits valuation methodology was presented in the economic analysis for the proposed rule. That analysis relied on the work of a Rand Corporation study (Manning, W.G. *et al.*, ''The Taxes of Sin—Do Smokers and Drinkers Pay Their Way?'' JAMA, pages 1604–1609, March 17, 1989, Vol. 261, No. 11), which estimated the 1986 net present value cost to society of smoking by comparing the excess costs of services used by smokers (i.e. employer and taxpayer share of excess medical bills, sick leave and group life insurance subsidies, lost taxes, fatalities from passive smoking, and smoking-related fires) to the taxes and premiums paid by smokers. The best estimate was a ''present value'' (discounted) cost of $0.39 per pack, under the assumption of a 5 percent discount rate applied to future costs. However, the study made no allowance for the cost of low-birthweight infants and as the Department found in the NPRM, these costs would add at least an additional 15 cents a pack.[5] Thus, the Department estimated that the net external costs born by non-smokers in 1989 exceeded 50 cents for every pack of cigarettes sold.

The Department now believes that this methodology was very conservative for valuing the benefits of smoking reductions, because it did not quantify the future benefits that would result from the expected reduction in adult smoking, and omitted all costs borne by the smokers themselves. Nevertheless, if this methodology were revised to assume that just one-half of the youth prevented from smoking were also to refrain as adults, it would predict that even a 5 percent reduction in the youth smoking rate would result in a savings of about $200 million annually to the rest of society. (According to Manning, the average smoker consumes roughly 16,300 packs over a lifetime; 25,000 fewer smokers × $.50 × 16,300 packs = $204,000,000).[6] Accordingly, a 10 percent reduction in youth smoking doubles this estimate and a 25 percent reduction raises it to $1 billion annually. Thus, despite the omission of all costs borne by the addicted smoker, this methodology confirms that even relative small reductions in adolescent tobacco use would generate substantial societal benefits.

Costs

The primary costs of complying with this regulation lie in the costs of inspection and enforcement. The Department does not have good data on the costs of enforcement because little research has been done in this area to measure costs. However, the Department does not believe these costs need to be substantial in relationship to other costs of State and local law enforcement, or to other duties faced by retail business.

The Department assumed, for purposes of analyzing costs, that the costs necessary to carry out the Model Law recommended by the Department represent the upper end of possible enforcement costs. In this scenario, a licensing apparatus must be set up, stores notified of their obligations, hearing procedures developed, a sampling design and procedure developed, both random and targeted inspections organized, fines levied, and the like. Even if an average State were to piggyback this system on top of an alcohol licensing and enforcement system, it could require a staff of one or two dozen people and an annual budget of approximately one million dollars. Across all jurisdictions, this implies costs on the order of $50 million for an effective enforcement effort. This includes all enforcement costs, including sampling and inspections.

In response to widespread concerns about inspections, and in particular to the problems of designing a sampling frame from which to select outlets to be inspected, the Department has developed additional information on these issues. It used information from the Batelle report and from cost projections of implementing a State-wide inspection system completed by CSAP's National Center for the Advancement of Prevention (''Estimating The Cost of Inspections under the Synar Amendment,'' July 1994). They analyzed the availability of data, and optimum design, for conducting random, unannounced inspections. It was concluded that in most States the most cost-effective sampling method would rely on licensing or commercial business lists, use cluster sampling rather than random sampling, and cover 300–400 outlets in the smallest half of the States and about 600 outlets in the larger States. Furthermore, it was concluded that on average, it would cost approximately $290,000 per State for an average State to develop a sampling design and conduct inspections, or about $17 million a year nationally. Some customers argued that the cost of inspections would be far lower, but these commenters did not include sampling design and selection costs.

This new estimate is broadly consistent with the original estimate that the total cost of all sampling, inspection, enforcement, and administrative costs would be about $50 million a year nationally if Model Law approaches were generally adopted. It may turn out that States are able to enforce their laws using relatively inexpensive approaches (as discussed below) in which case this $17 million estimate for the sampling and inspection functions may comprise the great majority of total costs, and the national total be closer to $25 million than to $50 million.

Regardless of what costs eventually are incurred, the Department believes that the cost of implementing this regulation should be shared by the Department and the States and therefore encourages States to use funds from the CDC's Preventive Health and Health Services Block Grant (42 U.S.C. 300w, *et seq.*), and from the Primary Prevention setaside of their SAPT Block Grants as explained earlier in this preamble. Alternatively, States could adopt a self-financing licensing and civil money penalty system or decide to raise tobacco taxes or use general fund revenues. Thus, States have a wide range of financing mechanisms available to defray their costs.

A number of commenters raised concern over the cost of using the criminal justice system—police and courts—to deal with illegal sales. The Department agrees that this would be very costly, not only in dollar terms, but also in displacing important crime-fighting activities. The Department does not recommend that States use the criminal justice system as a primary means of enforcement; instead, a system of civil money penalties and fines would almost certainly be more cost-effective.

The Department also originally estimated that retailers would incur costs on the order of $50 to $100 million annually for such functions as training staff to prevent sales to minors, with the lower range reflecting present enforcement activities. The public comments did not suggest that this estimate was flawed. However, the FDA proposed regulation's economic analysis explored retailer costs in more depth, focusing on training, and time needed to conduct identification checks on purchasers. The FDA concluded that total costs to retailers would be about $50 million annually. Accordingly, this estimate is used in this final Regulatory Impact Analysis.

[5] Federal Register, Vol. 58, No. 164, August 26, 1993, p. 45159.

[6] Manning, W.G., *et al.*, ''The Costs of Poor Health Habits, A Rand Study'', Harvard University Press, Cambridge. 1991, p. 76.

Comparison of Benefits to Costs

Based on the estimates above, the Department expects that after the several year period necessary for all or virtually all States to meet and exceed the 20 percent performance objective, net annual enforcement costs on the order of $100 million will generate annual social benefits that exceed hundreds of millions and potentially billions of dollars annually.

Because the Department was unable to make a precise quantitative estimate of the effectiveness of this regulation on youth smoking rates, it has further compared the costs and benefits using the FDA methodology assuming that much lower percentages of those deterred from smoking as youths remain nonsmokers as adults (the original analysis in Table 1 assumed that 50% of those deterred as youths would remain nonsmokers as adults). Using the original 3% discount rate, youth deterrence rates of ⅓, ⅕ and 1/10 will yield net benefits even if only 1% of those deterred as youths remain nonsmokers as adults. At the 1/20 and 1/100 youth deterrence rates, net benefits are still realized if 2% and 9% of those deterred as youths remain nonsmokers as adults, respectively. The results using a 7% discount rate are slightly higher. Youth deterrence rates of ⅓, ⅕, 1/10, 1/20, and 1/100 would yield net benefits if 1%, 2%, 3%, 6% and 28% of those deterred as youths remain nonsmokers as adults, respectively.

Distributional and Transitional Effects

The Department's cost estimates deal with the ultimate effects of smoking reductions and activities directed toward reductions. There are additional economic consequences which are not part of these calculations but which are of concern.

First, the Department believes there will be negligible adverse effects on the great majority of retail outlets. It is true that stores that currently sell tobacco products to minors will lose sales in the short run. These sales may or may not be offset by increases in sales of other items. However, with the single exception of vending machines (discussed below), the effect on most outlets will be small. There are approximately 1½ million retail sales outlets in the United States, and up to two-thirds of these sell tobacco products. (FDA estimates about one-half.) On average, tobacco products represent 5 percent of total sales in those outlets that sell tobacco. Thus, even if this rule were to achieve a one-third reduction in smoking by underage youth, the roughly $170 million near term annual shortfall (⅓ of $500 million) represents less than one-tenth of 1 percent of total sales in stores selling tobacco products. As is standard practice in estimating the economic effects of regulation, the Department assumes that there will be no loss to the economy resulting from a youth not spending $2 for a pack of cigarettes because the money will be spent on some other good or service. Considering that in many if not all cases the money not spent on tobacco will be spent on other products in the same stores, the negative economic effects on sales, costs, and profits will be negligible.

Second, the Department expects significant drops in vending-machine sales of tobacco products because of the actions that will have to be taken to prevent sales to minors from these devices. The Batelle report (Williams *et al.* estimates that about 96 percent of vending outlets sell cigarettes to minors. For the youngest minors, they are often the only easy sources of purchase. A study for the vending machine industry shows that only 23 percent of smoking youth now use vending machines often or occasionally (Response Research, Inc., ''Findings for the Study of Teenage Cigarette Smoking and Purchasing Behavior,'' June/July 1989). However, in the future this percentage would rise greatly—perhaps close to 100 percent—if enforcement eliminated other sources of illegal sales but left vending machines available to youth. Based on the research data, the Department would expect that States will face significant challenges in complying with the new law unless they impose strict controls on tobacco vending machines in locations accessible to minors.

In the original Regulatory Impact Analysis we estimated that perhaps 1,000 vending machine companies would face a loss of sales averaging about 7% of non-tax revenue. Since then, later data indicate that the economic effects will be significantly less. A long term trend towards decreased use of vending machines for cigarette sales has accelerated. According to the ''1994 State of the Industry Report'' in *Automatic Merchandiser,* August, 1994, both the projected number of cigarette vending machines and operator revenues from these machines fell by about one-fourth from 1992 to 1993 alone. According to the same source, cigarette sales are now only about 3.4% of operator revenues. Thus, the potential loss is only about half of that projected in the 1992 proposed Regulatory Impact Analysis even assuming complete elimination of vending machine sales.

A large number of commenters argued that the proposed rule represented an unfunded mandate. The Department agrees that the statute creates a financial burden for the States, albeit a burden that is very small as compared to unfunded mandates in areas such as pollution control and as compared to State expenditures taken as a whole. In response to these concerns, the Department has taken several actions. As stated earlier in this preamble, the Department is allowing States flexibility in designing enforcement strategies to reach the 20 percent goal for retail enforcement. In addition, States may, in implementing this regulation, use funds from the CDC's Preventive Health and Health Services Block Grant (42 U.S.C. 300w, *et seq*). States may also use funds from the primary prevention setaside of their SAPT Block Grant allotment under 45 CFR 124(b)(1) for sample design and inspection costs of complying with this regulation. States may not, however, use any funds from the SAPT Block Grant for any other activities related to the enforcement of their State laws. To allow States to use SAPT Block Grant funds for such activities as court costs, for example, could significantly reduce the amount of funds available for substance abuse prevention and treatment activities.

There is another cost to States in addition to costs required by this statute. Approximately 18 percent of the cost of a pack of cigarettes goes to pay State taxes. Tobacco tax losses will be offset in part by sales taxes on alternative goods purchased with the same dollars, but the net effect still could be a revenue loss because excise taxes on tobacco are higher than taxes on other consumer products. In its proposed regulations, the FDA estimated that a 50 percent reduction in the rate of tobacco consumption by youth would cause a gradual reduction in State cigarette excise tax revenues, from $31 million in the first year to $252 million in the tenth year. As discussed above, the result of the SAMHSA rule would be significantly smaller and any future lost tax revenues would diminish accordingly. To put this amount in perspective, total State and local government revenues from all sources exceed a trillion dollars a year, thousands of times this potential loss. Nonetheless, State enforcement programs involve a considerable fiscal effect that arises unavoidably if States enforce their own laws effectively and deter the illicit sale of tobacco products to minors.

Additional Alternatives

In the proposed rule the Department requested comment on several aspects of the proposed regulations. One alternative the Department considered was the application of a more stringent standard on the States, such as zero tolerance of illegal sales. However, the Department believes that risking an error which would force us to take vitally needed alcohol and drug-treatment funds from a State despite a serious enforcement effort is too dangerous at present. Hence, on an *interim* basis, and until the Department and the States gain some experience from serious State-wide efforts at enforcement, the Department will not require States to achieve this level of compliance at this time.

Second, the Department considered specifying particular enforcement measures that States must take, such as requiring that stores illegally selling to minors lose a license to sell tobacco products, or requiring local communities to enforce sales bans directly. However, the same uncertainty that would make a near 100 percent compliance objective imprudent until we have more information appears to make imposing uniform processes on all States unwise.

Third, the Department considered more stringent approaches to compliance measurement. As indicated above, random, unannounced inspections are a low-cost and highly effective method of determining which outlets violate the law. The Department considered requiring States to conduct a minimum number of inspections using youth, such as one inspection annually at 50 percent of all sales outlets. However, the Department decided that it would be premature to force a particular standard upon all States.

Paperwork Reduction Act

This final rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Estimates for FY 1995 and FY 1996 and thereafter are presented separately because the reporting requirements differ for these time periods.

Title: Minors' Access to Tobacco—45 CFR 96.130—FINAL RULE

Description: Data to be reported is required by 42 U.S.C. 300x–26 and will be used by the Secretary to evaluate State compliance with the statute, and the publish special analytic studies from time to time.

Description of respondents: State or local governments.

Estimated Annual Reporting Burden:

	Number of respondents	Number of responses per year	Hours per response	Total hours
FY 1995				
Annual Report:				
96.122(f)	7	1	0	[1] 0
96.130(e) (1–3)	52	1	10	[2] 520
State Plan				
96.122(g)(21)	0	0	0	[3] 0
96.130(e) (4, 5)	59	1	14	[4] 826
Total				1,346
FY 1996 and Thereafter				
Annual Report:				
96.130(e) (1–3)	59	1	10	590
State Plan:				
96.122(g) (21)	0	0	0	[3] 0
96.130(e) (4, 5)	59	1	14	826
Total				1,416

[1] This section describes reporting requirements for the first applicable fiscal year. For seven States, FY 1995 is the first applicable fiscal year. States are required to provide a copy of the statute enacting the law and are asked to provide a description of the previous year's activities, if they so desire. No burden is associated with these requests.

[2] This is the burden associated with completing the annual report narrative and Form 06B as requested in the SAPT Block Grant Application instructions and format.

[3] This section duplicates the information collection language in section 96.130(e). The burden is claimed under 96.130(e).

[4] This is the burden associated with completing the State Plan narrative as requested in the SAPT Block Grant Application instructions and format.

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the agency official whose name appears in the **FOR FURTHER INFORMATION CONTACT** section above, and to Deborah Trunzo, Office of Applied Studies/SAMHSA, Room 16–105 Parklawn,

5600 Fishers Lane, Rockville, MD 20857.

We received no public comments on the estimated public reporting burden, and it remains the same as that contained in the proposed rule. We do not believe material changes made in this rule should change this burden.

Lists of Subjects in 45 CFR Part 96

Alcohol abuse, Alcoholism, Drug abuse, Tobacco.

For the reasons set out in the preamble, 45 CFR part 96 is amended as set forth below.

Dated: December 15, 1995.

Donna E. Shalala,

Secretary.

PART 96—BLOCK GRANTS

1. The authority citation for 45 CFR Part 96, subpart L continues to read as follows:

Authority: 42 U.S.C. 330x–21 to 300x–35 and 300x–51 to 330x–64.

§ 96.122 Application content and procedures.

2. Section 96.122 is amended by adding paragraph (f)(6), redesignating paragraphs (g)(21) and (g)(22) and (g)(23) respectively and adding a new paragraph (g)(21) to read as follows:

* * * * *

(f) * * *

(6) For the first applicable fiscal year for which the State is applying for a grant, a copy of the statute enacting the law as described in § 96.130(b) and, if the State desires, a description of the activities undertaken during the previous fiscal year to enforce any law against the sale or distribution of tobacco products to minors that may have existed; and for subsequent fiscal years for which the State is applying for a grant, the annual report as required by § 96.130(e) and any amendment to the law described in § 96.130(b).

* * * * *

(g) * * *

(21) a description of the strategies to be utilized by the State for enforcing the law required by section 96.130(b);

* * * * *

§ 96.123 [Amended]

3. Section 96.123 is amended to add paragraph (a)(5) to read as follows:

(a) * * *

* * * * *

(5) The State has a law in effect making it illegal to sell or distribute tobacco products to minors as provided in § 96.130(b), will conduct annual, unannounced inspections as prescribed in § 96.130, and will enforce such law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18;

* * * * *

4. Section 96.130 is added to read as follows:

§ 96.130 State law regarding sale of tobacco products to individuals under age of 18.

(a) For purposes of this section, the term ''first applicable fiscal year'' means fiscal year 1994, except in the case of any State described in section 1926(a)(2) of the PHS Act, in which case ''first applicable fiscal year'' means fiscal year 1995. The term ''outlet'' is any location which sells at retail or otherwise distributes tobacco products to consumers including (but not limited to) locations that sell such products over-the-counter or through vending machines.

(b) The Secretary may make a grant to a State only if the State, for the first applicable fiscal year and subsequent fiscal years, has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under age 18 through any sales or distribution outlet, including over-the-counter and vending machine sales.

(c) For the first and second applicable fiscal years, the State shall, at a minimum, conduct annually a reasonable number of random, unannounced inspections of outlets to ensure compliance with the law and plan and begin to implement any other actions which the State believes are necessary to enforce the law.

(d) For the third and subsequent fiscal years, the States shall do the following:

(1) The State shall conduct annual, random, unannounced inspections of both over-the-counter and vending machine outlets. The random inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations.

(2) Random, unannounced inspections shall be conducted annually to ensure compliance with the law and shall be conducted in such a way as to provide a probability sample of outlets. The sample must reflect the distribution of the population under age 18 throughout the State and the distribution of the outlets throughout the State accessible to youth.

(e) The State shall annually submit to the Secretary with its application a report which shall include the following:

(1) a detailed description of the State's activities to enforce the law required in paragraph (b) of this section during the fiscal year preceding the fiscal year for which that State is seeking the grant;

(2) a detailed description regarding the overall success the State has achieved during the previous fiscal year in reducing the availability of tobacco products to individuals under the age of 18, including the results of the unannounced inspections as provided by paragraph (d) of this section for which the results of over-the-counter and vending machine outlet inspections shall be reported separately;

(3) a detailed description of how the unannounced inspections were conducted and the methods used to identify outlets;

(4) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought; and

(5) the identity of the agency or agencies designated by the Governor to be responsible for the implementation of the requirements of section 1926 of the PHS Act.

(f) Beginning in the second applicable fiscal year, the annual report required under paragraph (e) of this section shall be made public within the State, along with the State plan as provided in section 1941 of the PHS Act.

(g) Beginning with applications for the fourth applicable fiscal year and all subsequent fiscal years, the Secretary will negotiate with the State, as part of the State's plan, the interim performance target the State will meet for that fiscal year and in subsequent years will seek evidence of progress toward achieving or surpassing a performance objective in which the inspection failure rate would be no more than 20% within several years.

(h) Beginning with the second applicable fiscal year and all subsequent fiscal years, the Secretary shall make a determination, before making a Block Grant to a State for that fiscal year, whether the State reasonably enforced its law in the previous fiscal year pursuant to this section. In making this determination, the Secretary will consider the following factors:

(1) During the first and second applicable fiscal years, the State must conduct the activities prescribed in paragraph (c) of this section.

(2) During the third applicable fiscal year, the State must conduct random, unannounced inspections in accordance with paragraph (d) of this section.

(3) During the fourth and all subsequent applicable fiscal years, the State must do the following:

(i) conduct random, unannounced inspections in accordance with paragraph (d); and

(ii) except as provided by paragraph (h)(4) of this section, the State must be in substantial compliance with the target negotiated with the Secretary under paragraph (g) of this section for that fiscal year.

(4) If a State has not substantially complied with the target as prescribed under paragraph (h)(3)(ii) of this section for any fiscal year, the Secretary, in extraordinary circumstances, may consider a number of factors, including survey data showing that the State is making significant progress toward reducing use of tobacco products by children and youth, data showing that the State has progressively decreased the availability of tobacco products to minors, the composition of the outlets inspected as to whether they were over-the-counter or vending machine outlets, and the State's plan for improving the enforcement of the law in the next fiscal year.

(i) If, after notice to the State and an opportunity for a hearing, the Secretary determines under paragraph (h) of this section that the State has not maintained compliance, the Secretary will reduce the amount of the allotment in such amounts as is required by section 1926(c) of the PHS Act.

(j) States may not use the Block Grant to fund the enforcement of their statute, except that they may expend funds from the primary prevention setaside of their Block Grant allotment under 45 CFR 96.124(b)(1) for carrying out the administrative aspects of the requirements such as the development of the sample design and the conducting of the inspections.

[FR Doc. 96–467 Filed 1–18–96; 8:45 am]

BILLING CODE 4160–20–M

federal register

Friday
January 19, 1996

Part V

Federal Trade Commission

Service Corporation International; Proposed Consent Agreement With Analysis to Aid Public Comment; Notice

FEDERAL TRADE COMMISSION

[File No. 951 0108]

Service Corporation International; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit Service Corporation International (SCI), the largest owner of funeral homes in North America, to acquire Gilbraltar Mausoleum Corporation and would require SCI, among other things, to divest, within 12 months, a number of properties, including assets in Amarillo, Texas, and Brevard and Lee Counties, Florida, to restore competition. In addition, the consent agreement would require SCI, for 10 years, to notify the Commission before acquiring certain similar assets in any of these markets.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Federal Trade Commission, Atlanta Regional Office, 1718 Peachtree St., N.W., Room 1000, Atlanta, GA. 30367. (404) 347–4837.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the acquisition of the voting securities of Gibraltar Mausoleum Corporation (''Gibraltar'') by Service Corporation International and Rocky Acquisition Corp. (collectively, ''SCI''), and it now appearing that SCI, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event in will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives and right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''SCI'' means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents and representatives.

B. ''Commission'' means the Federal Trade Commission.

C. ''Funerals'' means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets

and outside cases; and the arrangement for and conveyance of the body to a cemetery of crematory for final disposition.

D. ''Funeral establishment'' means the Assets and Businesses of a facility that provides funerals.

E. ''Perpetual care cemetery services'' means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

F. ''Cemetery'' means the Assets and Businesses of a facility that provides perpetual care cemetery services.

G. ''Crematory services'' means the incineration of human remains.

H. ''Crematory'' means the Assets and Businesses of a facility that performs cremations.

I. ''Assets and Businesses'' include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the SCI, Gibraltar or Schooler Gordon names, trademarks or other identification;

3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

4. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. All right, title and interest in the trade name of each funeral establishment, cemetery or crematory, but excluding the trade name ''Schooler Gordon''; and

6. All right, title and interest in the books, records and files pertinent to any of the Properties to be Divested.

J. ''Properties to be Divested'' means all of the Assets and Businesses of the following funeral establishments, cemeteries and crematories:

1. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home), 315 East Fifth Street, Amarillo, Texas 79105
2. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home), 1505 Martin Street, Amarillo, Texas 79105
3. Memory Gardens of Amarillo & Crematory, I–27 and McCormack Road, Amarillo, Texas 79114
4. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville, Florida 32796
5. Oaklawn Memorial Gardens & Mausoleum, 2116 Garden Street, Titusville, Florida 32796
6. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida 33904
7. Harvey-Englehardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida 33907

II

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the Properties to be Divested.

B. Respondent shall divest the Properties to be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties to be Divested is to ensure that continued use of the Properties to be Divested in the same business in which the Properties to be Divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Properties to be Divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the Properties to be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Properties to be Divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the Properties to be Divested as required by this order.

III

It is further ordered That:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to be Divested within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Properties to be Divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent and its counsel of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to be Divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the

court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to be Divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to be Divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals, perpetual care cemetery services, or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals, perpetual care cemetery services or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as ''the Notification''), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the ''first waiting period''). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

This Paragraph IV shall not apply to new facilities constructed or developed by respondent.

V

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written

communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture as required by this order.

B. One year (1) from that date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order.

VI

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII

It is further ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (''Agreement'') is by and between Service Corporation International (''SCI''), a corporation organized and existing under the laws of the State of Texas, with its principal executive office located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, ''Parties'').

Premises

Whereas, on or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar Mausoleum Corporation (''Gibraltar''), in which (1) Gibraltar would be merged into Rocky Acquisition Corp., a wholly-owned subsidiary of SCI, and (2) Gibraltar shareholders would receive SCI common stock and other consideration specified therein (''Acquisition''); and

Whereas, both SCI and Gibraltar own interests in funeral establishments that provide funerals, cemeteries that provide perpetual care cemetery services, and crematories that provide cremations to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''SCI/Gibraltar Consent Agreement''), the Commission must place the SCI/Gibraltar Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and businesses of certain funeral establishments, cemeteries, and a crematory (''Hold Separate Assets'') listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Gibraltar Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement are to: (1) Preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Gibraltar Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, cemeteries, and a crematory as specified in the SCI/Gibraltar Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and unless the Commission determines to reject the SCI/Gibraltar Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Gibraltar Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the Properties to be Divested pursuant to the SCI/Gibraltar Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Gibraltar Consent Agreement.

2. SCI shall hold and Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Gibraltar Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Gibraltar Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing,

accounting, management information systems, and computer support, as SCI or Gibraltar provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. (''Material confidential information,'' as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Gibraltar or itself, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Gibraltar stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Gibraltar that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during office hours of SCI, and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement; and

b. Upon five (5) days' notice to SCI and without restraint or interference therefrom, to interview officers or employees of SCI, who may have counsel present, regarding such matters.

This Agreement shall not be binding until approved by the Commission.

Exhibit A

Hold Separate Assets

A. The following funeral establishment, cemetery, and crematory shall be held separate until the divestitures of the two Blackburn-Shaw Funeral Homes (now known as Schooler-Gordon Blackburn-Shaw Funeral Homes) and Memory Gardens of Amarillo & Crematory pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Memorial Park Funeral Home, 6969 I–40 East, Amarillo, Texas 79120
2. Memorial Park Cemetery & Crematory, 6969 I–40 East, Amarillo, Texas

B. The following cemetery and funeral establishment shall be held separate until their divestiture pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Oaklawn Memorial Gardens and Mausoleum, 2116 Garden Street, Titusville, Florida 32796
2. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville, Florida 32796
3. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida 33904
4. Harvey-Englehardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida 33907

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Service Corporation International (''SCI'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that SCI's acquisition of Gibraltar Mausoleum Corporation will violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, in three relevant geographic markets. In Lee County, Florida, both SCI and Gibraltar own funeral establishments and are actual competitors in the provision of funerals. SCI is the largest seller of funeral services in Lee County and Gibraltar is the third largest. In Brevard County, Florida, both SCI and Gibraltar own funeral establishments and cemeteries and are actual competitors in the provision of funerals and perpetual care cemetery services. Gibraltar is the largest firm selling funerals and perpetual care cemetery services in Brevard County and SCI is the second largest. Finally, in Amarillo, Texas and its immediate environs, both SCI and Gibraltar own funeral establishments, cemeteries and crematories, and are actual competitors in the provision of funerals, perpetual care cemetery services and cremation services. SCI and Gibraltar are the first and second largest sellers of funerals, respectively. They own two of three perpetual care cemeteries in the area and they own the only two crematories.

The complaint alleges that the acquisition may substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between SCI and Gibraltar in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets. These effects increase the likelihood that firms would increase prices, decrease quality and restrict output in the relevant markets if the acquisition were consummated.

The proposed order requires SCI to divest two funeral establishments in Lee County, Florida; one funeral establishment and one cemetery in Brevard County; and two funeral establishments, a cemetery and a crematory in Amarillo, Texas.

The purpose of this analysis is to facilitate public comment on the

proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–507 Filed 1–18–96; 8:45 am]

BILLING CODE 6750–01–M

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